ONTARIO
LABOUR RELATIONS BOARD
REPORTS

September/October 2007

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A Bimonthly Series of Decisions from the Ontario Labour Relations Board

Cited [2007] OLRB REP. SEPTEMBER/OCTOBER

EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

Selected decisions of particular reference value are also reported in *Canadian Labour Relations Boards Reports*, Butterworth & Co., Toronto.

CASES REPORTED

COURT PROCEEDINGS

SUBJECT INDEX

the Board accepted, that arbitrators had the authority to make the same determinations – The Board was not satisfied that there was any overriding public policy or remedial opportunity that made it more appropriate than arbitration for a determination of the issue – Application dismissed

Construction Industry – Bar – Certification – Voluntary Recognition – In an application for certification filed by CUPW, the intervenor, Local 183, claimed that the application was barred because it had a VRA with the responding employer – In reply, CUPW claimed that at the time Local 183 entered into the VRA with the employer there were no employees in the VRA bargaining unit – The Board found that, for the purposes of s. 66, the creation of an employment relationship is critical and is not dependent upon whether work has been performed for the employer as of the date that the VRA was entered into – The Board found that an employment relationship will commence upon the acceptance of a non-conditional employment offer and after the completion of the necessary employment documentation – The Board held that Local 183 and the employer were not required to wait until after the employees had actually commenced work prior to entering into the VRA – There was no reason to set aside the agreement – Matter continues

Construction Industry – Certification – An employee alleged that he had been misled into signing a membership card contrary to s. 128.1(5) of the LRA – The Board stated that in considering allegations of this nature, it is important to distinguish between an employee's change of heart about joining a union, and a genuine subsequent realization that the consequences of the employee's signing a card were substantially different from what had been represented to him/her – In this case, the Board found that no misrepresentation had been made to the employee and that he simply had had second thoughts about joining the union – In coming to this conclusion, the Board noted that the employee: had presented two contradictory explanations that were unreasonable; had signed the membership card which was simple and straightforward; had provided a considerable amount of personal information on the membership card that was inconsistent with his explanation for signing the card; and had familiarity with being a member of a union from a previous place of work – Accordingly, the Board gave no weight to the submissions made by the employee and declined to order a hearing to receive evidence from him about the allegations he made – Certificate granted

Construction Industry – Certification – Remedies – Unfair Labour Practice – In this request for remedial certification the Board found: First, that the second-in-command asking employees if they had signed cards was intimidatory – Second, that the owner's statements without consequences, actual or intended, do not become unlawful statements simply because an employee overhears them in circumstances where it was not reasonable to expect that employee to overhear them – However, the owner's attempt to conduct surveillance on a meeting being held after hours (and off employer or customer property) for the purposes of discovering who might be interested in the union was improper and was a violation of s. 70 – Third, that a lay-off due to a temporary downturn in work was not tainted by any anti-union animus – This conclusion was supported by the fact that the employee did not actively demonstrate support for the union, and he was not

justice was breached by proceeding without the union in the first hearing and by unfairly limiting the union's presentation time in the second hearing – The court noted that context is often the balancing ingredient when weighing the undeniable tension as among the tribunal's ability to control its process, the duty of fairness and the degree of deference courts should afford the exercise of the tribunal's discretion – The court found that the Board was not proceeding pursuant to its authority under section 110(18) and Rule 41, but rather pursuant to the abridgement provisions in its general Rules – In derogating from the norm through abridgement, the Board may only vary times, not eliminate them; it must give notice of a hearing, although it may vary the manner of doing so; it must conduct a hearing, although it may allow it to proceed electronically; it must allow the parties full opportunity to present evidence and make submissions, although it may direct how this is to be done, including orally or in writing, whether by evidence admissible in court of law or not – The court reviewed the factors to be applied in assessing the Board's duty of procedural fairness as set out in *Baker*, concluding that the Board merits a high degree of deference with respect to the fairness of its procedural decisions – The court found that the circumstances, in this case, were extreme and warranted quick intervention and that the Board's abridgement of times and procedures, and its finding of proper service and notice were appropriate in the context of the situation and did not operate as a breach of fairness – The court found nothing wrong with limiting the time for presentations in the second hearing and that the union had sufficient and fair opportunity to present its evidence and make its position clear – Finally, the court found that if there was a deficiency of fairness in the initial hearing, it was cured by the reconsideration hearing – Application for judicial review dismissed

Reconsideration – Duty of Fair Representation – Judicial Review – The Board exercised its discretion not to inquire into a duty of fair representation complaint when it ascertained the complaint was virtually identical to an earlier application that the applicant had withdrawn – The Board subsequently dismissed the applicant's request for reconsideration – On judicial review, the Court found the Board had acted reasonably and within its jurisdiction – Application for judicial review dismissed

Reconsideration – Judicial Review – Lock-out – Natural Justice – Practice and Procedure – Strike – The TTC brought an application for a declaration that its employees were about to engage in an illegal strike at the start-up of the morning shift – The Board provided notice to the union and counsel who normally acted for the union of a 5:30 a.m. hearing by conference call to deal with the application, leaving telephone messages and sending a facsimile to the union's office – The Board held that the union had been served with the application and had received notice of the hearing – The Board ordered the employees to cease and desist from any further engagement in the unlawful strike – The ATU alleged the TTC had illegally locked out its employees, and also sought reconsideration of the earlier cease and desist order (the Whitaker decision) – The Board held that no lock-out was taking place, and stated that the parties could have had their differences considered through the grievance and arbitration process – The Board also found that the illegal strike was continuing – The Board stated that even if it were to find that the union had not received notice of the earlier hearing, it was not appropriate to vary the Board's order – The union had full opportunity to make the submissions it would have been able to make earlier – Lock-out application dismissed; reconsideration of strike application denied – On the judicial review, the union took the position that the Board exceeded its

Status – *Colleges Collective Bargaining Act* – Employee – OPSEU asked the Board to determine whether four continuing education instructors were employees under the CCBA and, if so, whether they fall within the academic bargaining unit – St. Lawrence brought a motion seeking to have the Board defer the issue to arbitration – The Board held that its powers under s. 81 of CCBA were similar to the jurisdiction it enjoyed regarding employee status disputes under s. 114(2) of the LRA – The parties agreed, and the Board accepted, that arbitrators had the authority to make the same determinations – The Board was not satisfied that there was any overriding public policy or remedial opportunity that made it more appropriate than arbitration for a determination of the issue – Application dismissed

Strike – Judicial Review – Lock-out – Natural Justice – Practice and Procedure – Reconsideration – The TTC brought an application for a declaration that its employees were about to engage in an illegal strike at the start-up of the morning shift – The Board provided notice to the union and counsel who normally acted for the union of a 5:30 a.m. hearing by conference call to deal with the application, leaving telephone messages and sending a facsimile to the union's office – The Board held that the union had been served with the application and had received notice of the hearing – The Board ordered the employees to cease and desist from any further engagement in the unlawful strike – The ATU alleged the TTC had illegally locked out its employees, and also sought reconsideration of the earlier cease and desist order (the Whitaker decision) – The Board held that no lock-out was taking place, and stated that the parties could have had their differences considered through the grievance and arbitration process – The Board also found that the illegal strike was continuing – The Board stated that even if it were to find that the union had not received notice of the earlier hearing, it was not appropriate to vary the Board's order – The union had full opportunity to make the submissions it would have been able to make earlier – Lock-out application dismissed; reconsideration of strike application denied – On the judicial review, the union took the position that the Board exceeded its jurisdiction by conducting an "expedited hearing", without authority and that natural justice was breached by proceeding without the union in the first hearing and by unfairly limiting the union's presentation time in the second hearing – The court noted that context is often the balancing ingredient when weighing the undeniable tension as among the tribunal's ability to control its process, the duty of fairness and the degree of deference courts should afford the exercise of the tribunal's discretion – The court found that the Board was not proceeding pursuant to its authority under section 110(18) and Rule 41, but rather pursuant to the abridgement provisions in its general Rules – In derogating from the norm through abridgement, the Board may only vary times, not eliminate them; it must give notice of a hearing, although it may vary the manner of doing so; it must conduct a hearing, although it may allow it to proceed electronically; it must allow the parties full opportunity to present evidence and make submissions, although it may direct how this is to be done, including orally or in writing, whether by evidence admissible in court of law or not – The court reviewed the factors to be applied in assessing the Board's duty of procedural fairness as set out in *Baker*, concluding that the Board merits a high degree of deference with respect to the fairness of its procedural decisions – The court found that the circumstances, in this case, were extreme and warranted quick intervention and that the Board's abridgement of times and procedures, and its finding of proper service and notice were appropriate in the context of the situation and did not operate as a breach of fairness – The court found nothing wrong with limiting the time for presentations in the second hearing and that the union had sufficient and fair opportunity to present its evidence and make its position clear –

1856-06-R The Canadian Union of Postal Workers (CUPW), Applicant v. **Distinction Service Plus Inc.**, Responding Party v. Universal Workers Union, Labourers International Union of North America, Local 183, Intervenor

Bar – Certification – Construction Industry – Voluntary Recognition – In an application for certification filed by CUPW, the intervenor, Local 183, claimed that the application was barred because it had a VRA with the responding employer – In reply, CUPW claimed that at the time Local 183 entered into the VRA with the employer there were no employees in the VRA bargaining unit – The Board found that, for the purposes of s. 66, the creation of an employment relationship is critical and is not dependent upon whether work has been performed for the employer as of the date that the VRA was entered into – The Board found that an employment relationship will commence upon the acceptance of a non-conditional employment offer and after the completion of the necessary employment documentation – The Board held that Local 183 and the employer were not required to wait until after the employees had actually commenced work prior to entering into the VRA – There was no reason to set aside the agreement – Matter continues

BEFORE: *Peter F. Chauvin*, Vice-Chair.

APPEARANCES: *Sean Fitzpatrick, Russ Stallberg* and *Bill Loreti* appeared for the applicant; *Brian O'Byrne* and *Claude Bigras* appeared for the responding party; *Robert Gibson, Brad Ridge* and *Maria DaSilva* appeared for the intervenor.

DECISION OF THE BOARD; October 25, 2007

1. This is an application for certification under the *Labour Relations Act, 1995* (the "Act") that was filed on September 19, 2006.

2. In a decision in this matter dated July 16, 2007, the Board ruled that "build up" does not apply to this application.

3. The Intervenor ("Local 183") claims that the application is barred because Local 183 has a voluntary recognition agreement dated August 3, 2006 ("the VRA") with the responding party ("Distinction"). The applicant ("CUPW") requests that the Board declare, pursuant to section 66 of the Act, that Local 183 was not "at the time the agreement was entered into, entitled to represent the employees in the bargaining unit". CUPW submits that on August 3, 2006, Distinction had no employees in the VRA bargaining unit. If the Board were to make such a declaration, the VRA ceases to operate and the VRA will not act as a bar to the application for certification.

4. This decision pertains only to the issue of whether, for the purpose of making the declaration under section 66, Distinction had any employees, on August 3, 2006, in the VRA bargaining unit.

The Facts

5. The parties agreed upon most of the facts that are relevant to this decision.

6. This case pertains to the contracts for cleaning services at Canada Post facilities. Prior to August 2006, J & A Building Services Ltd. ("J & A") had contracts with Canada Post to provide building cleaning services at Canada Post's Gateway Sorting Plant in Mississauga ("Gateway"), at Canada Post's South Central Sorting Plant in Toronto ("South Central"), at Yonge Street and at Orbiter Drive in Mississauga.

7. Local 183 had a collective agreement with J & A regarding its cleaning employees at Gateway. CUPW had a collective agreement with J & A regarding its cleaning employees at South Central.

8. In 2006, Canada Post put its cleaning contracts up for tender. Distinction is an employer that provides cleaning services. Distinction bid on the contracts. Distinction was awarded the contracts for Gateway (to commence work on August 6, 2006) and South Central (to commence work on or about September 18, 2006).

9. From approximately 11:00 p.m. on July 11, 2006 to 2:00 a.m. on July 12, 2006, Mr. Carlos Gomes, Director of Operations for Distinction and Mr. Jose Veheuier, another representative of Distinction, conducted a meeting with the employees of J & A working at South Central and informed them that Distinction would be taking over the cleaning contract at South Central. Mr. Gomes informed the employees that they could become employees of Distinction and perform the same work under the same terms of employment. Mr. Gomes handed out an Administrative File form, a Direct Deposit form, a TD1 Personal Tax Credits form, an Employee's Undertaking form, a Criminal Records and References Check form and a Uniform Requisition form. Mr. Gomes offered the employees of J & A employment with Distinction and invited them to accept the offer of employment and complete the forms.

10. Mr. Gomes and Mr. Veheuier conducted a similar meeting with the employees of J & A at Gateway from approximately 3:00 p.m. to 4:00 p.m. on July 12, 2006.

11. In July 2006 Local 183 had several of these persons sign new Local 183 membership cards. As of August 3, 2006 forty-one of those persons had signed the forms that had been handed out at the meetings and had provided those forms to Distinction. As of August 3, 2006 none of those 41 persons had yet performed any work for Distinction or been paid any wages by Distinction.

12. On August 3, 2006, Local 183 and Distinction entered into the VRA in which they agreed that Distinction would be bound to the collective agreement that Local 183 had with J & A at Gateway. Some modifications were made to the collective agreement, including that the recognition clause would be changed from all employees engaged in cleaning at Gateway to all employees engaged in cleaning "at all locations throughout Board Area 8". Also the VRA states that new workplaces in Board Area 8 will be covered by a separate schedule for some terms, including wages.

13. On August 6, 2006, Distinction commenced to perform the cleaning services at Gateway. On or about September 18, 2006, Distinction commenced to perform the cleaning services at South Central. All of the 41 persons did perform cleaning services at Gateway or South Central.

14. On September 19, 2006, CUPW filed its application to be certified to represent the employees of Distinction at South Central. Local 183 filed its intervention, stating that CUPW's application for certification was barred by Local 183's August 3, 2006 VRA.

15. CUPW did not allege that Distinction or Local 183 had engaged in any violations of the Act in connection with Distinction's alleged hiring of the 41 persons.

The Parties Submissions

16. Distinction's submission was relatively simple. Distinction relies upon several passages from *Employment Law in Canada*, Fourth Edition, 2004, England, Wood and Christie, for the basic principle that: (1) an employment relationship is created once a person accepts an offer of employment, and; (2) the employment relationship can be created before any work has actually been performed or any wages been paid. The following is the most analogous passage provided in the text for these principles:

> 7.25 Furthermore, a labour arbitrator, Professor Innis Christie, has ruled that an employment contract can be formed prior to the commencement of actual work for the purpose of determining whether a person is entitled to the benefits in a collective agreement that applies to "employees." (See *Re Saint John Fire Fighters' Association, Local Union 771 and City of Saint John*, unreported award of Innis Christie, Feb. 21, 2003, esp. pp.23-26.) In that case, the complainant was informed that he had been selected for the position of firefighter and went out to celebrate the same night. Unfortunately, he became involved in fisticuffs in a local bar and the employer cancelled his appointment when it discovered the incident. The collective agreement allowed "employees" to grieve and arbitrate an alleged unjust dismissal. Professor Christie held that the complainant had the requisite "employee" status since an offer and acceptance of employment had taken place even though the complainant had not yet commenced work.

17. Distinction submits that it clearly offered the J & A employees employment with Distinction to perform the same work at the same location under the same or similar terms of employment and that 41 of the J & A employees had accepted that offer of employment by August 3, 2006 by completing the forms and returning them to Distinction. Distinction submits that the employment relationship had thereby been established as of August 3, 2006 and it matters not that as of August 3, 2006 none of those 41 employees had yet actually performed any work for Distinction or been paid any wages by Distinction. Distinction submits that it makes sense that it had to hire and have its workforce in place prior to August 6, 2006 so that it would be able to commence to fulfil its obligations under its contract with Canada Post to clean Gateway as of August 6, 2006.

18. Local 183 adopted Distinction's submissions, and also relied upon *Canarm Ltd.*, [1996] O.L.R.D. No. 3881, OLRB Rep. September/October 747; *Kawartha Downs Ltd.*, [2002] O.L.R.D. No. 1164; Board File No. 3574-01-R (April 24, 2003) and *Coreslab Structures (Ont) Inc.*, [2003] O.L.R.D. No. 3335; OLRB Rep. September/October 765 for the principle that persons who are not at work on the application filing date in an industrial application for certification are still entitled to vote as long as they had an employment relationship with the employer as of the application filing date. Local 183 also relied upon *MacDonald, Dettwiler and Associates Ltd.* (2006) 149 L.A.C. (4th) 32 (T. Jolliffe, Q.C.) which cites with approval the *Saint*

John Fire Fighters Association case referred to above in the passage from *Employment Law in Canada*.

19. CUPW submits that the 41 persons continued to perform work for J & A until August 5, 2006 and therefore continued to be employees of J & A until August 5, 2006. CUPW submits that the 41 persons did not become employees of Distinction until August 6, 2006 when they had ceased to be employees of J & A and they had commenced to actually perform work for Distinction. CUPW submits that the earlier signing of the forms did not create an employment relationship prior to August 6, 2006. CUPW relied upon *Copernicus Lodge*, 2004 Can LII 47757 (ON L.R.B.), *Burnaby Winter Club*, [1996] B.C.L.R.B.D. No. 117, *Spectra Restaurants Inc.*, [1997] B.C.L.R.B.D. No. 55, *Tropical Inn*, [1998] S.L.R.B.D. No. 8, *Swiss Chalet Employers Association and Canadian Union of Restaurant and Related Employees, Local 88* (1987), 4 C.L.A.S. 31 (Joyce), *PCL Packaging Ltd. and Energy and Chemical Workers Union, Local 593* (1981) 29 L.A.C. (2d) 372 (Saltman), *City of Toronto and Canadian Union of Public Employees, Local 43* (1979), 21 L.A.C. (2d) 361 (Gorsky) and *Schwartz v. Canada*, [1996] 1 S.C.R. 254.

20. CUPW submitted that the *Copernicus Lodge*, *Burnaby Winter Club* and *Spectra Restaurant* cases are all certification cases in which a Labour Board expressed concerns regarding the mischief that could arise should the Labour Board allow persons who had not yet commenced to work as of the date the application for certification was filed be considered to be employees. The employer could add persons who had not in fact been hired to commence work to dilute the union's membership evidence. The Labour Board ruled that such persons are not employees for the purpose of the application for certification. CUPW submitted that the same mischief could arise in this case. CUPW stated that Distinction and Local 183 could be claiming that persons who had not yet been hired as of August 3, 2006, but for whom Local 183 had membership cards, had been hired in order to satisfy the requirement in section 66. CUPW submitted that the best way to avoid this possible mischief is to require that the persons must have actually commenced to perform work as of the date that the VRA is entered into. This would mean that the VRA could not be entered into until after the employer had commenced to actively perform some work and engaged employees in work.

21. In reply, Distinction and Local 183 submitted that the cases relied upon by CUPW must be considered in their factual context, and when this is done, they do not apply to this case. Distinction and Local 183 noted that the *Copernicus Lodge*, *Burnaby Winter Club* and *Spectra Restaurants* cases are all application for certification cases that pertain to the issue of whether a person who had not yet commenced to perform work for the employer should be considered to be an employee for the purpose of a certification vote. Distinction and Local 183 noted that the *Tropical Inn*, *Swiss Chalet* and *PCL Packaging* cases all pertain to the issue of determining when employment should be considered to have commenced for the purpose of assessing when a probationary period commenced. Finally, Distinction and Local 183 submitted that the *Schwartz* case only pertains to the very narrow issue of whether, for the purpose of claiming a settlement payment as a retirement allowance under the *Income Tax Act*, the claimant must have actually commenced to perform work.

22. Accordingly, Distinction and Local 183 submitted that all the cases relied upon by CUPW pertain to very different fact situations and issues and are therefore distinguishable. As such, Distinction and Local 183 submit that these cases do not support the position that, for the purposes of section 66 of the Act, a union should not be considered to have been "at the time the

agreement was entered into, entitled to represent the employees in the bargaining unit" unless those persons had actually commenced to perform work for the employer as of the date the voluntary recognition agreement was entered into.

Decision

23. Section 66 of the Act states:

> **66.** (1) Where an employer and a trade union that has not been certified as the bargaining agent for a bargaining unit of employees of the employer enter into a collective agreement, or a recognition agreement as provided for in subsection 18(3), the Board may, upon the application of any employee in the bargaining unit or of a trade union representing any employee in the bargaining unit, during the first year of the period of time that the first collective agreement between them is in operation or, if no collective agreement has been entered into, within one year from the signing of such recognition agreement, declare that the trade union was not, at the time the agreement was entered into, entitled to represent the employees in the bargaining unit.
>
> (2) Before disposing of an application under subsection (1), the Board may make such inquiry, require the production of such evidence and the doing of such things, or hold such representation votes, as it considers appropriate.
>
> (3) On an application under subsection (1), the onus of establishing that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was entered into rests on the parties to the agreement.
>
> (4) Upon the Board making a declaration under subsection (1), the trade union forthwith ceases to represent the employees in the defined bargaining unit in the recognition agreement or collective agreement and any collective agreement in operation between the trade union and the employer ...ceases to operate forthwith in respect of the employees affected by the application.

24. I find that, for the purpose of determining under section 66 whether a union was "at the time the agreement was entered into, entitled to represent the employees in the bargaining unit", the persons need not have actually commenced to perform work for the employer as of the date that the VRA was entered into, as long as an employment relationship had been created between the persons and the employer as of that date. On the facts of this case, I find that such an employment relationship had been created between Distinction and the 41 persons as of August 3, 2006.

25. My reasons for this conclusion are as follows. For the purpose of making this determination under section 66, I accept the above cited passage from *Employment Law in Canada* which states that: (1) an employment relationship is created once a person accepts an offer of employment, and: (2) the employment relationship can be created before any work has actually been performed or any wages been paid.

26. The issue then is whether an employment relationship had in fact been created between Distinction and the 41 persons as of August 3, 2006. I find that it had. Distinction had offered the 41 persons employment at the same location, doing the same work, under the same terms of employment. This is more than a sufficiently clear and certain offer. The 41 persons accepted this offer by completing and returning the forms. The 41 persons knew that they were accepting an offer of employment, both by what was said at the meetings on July 11 and 12, 2006, and by the words on the forms.

27. The Administrative File form states, that it is "to be filled in by the employee" and states "I understand that I am being hired ...". The 41 persons signed the Direct Deposit form on the line entitled "Employee's signature" as the "Employee authorization" to directly deposit the "employee's paycheck" to their bank accounts. The Revenue Canada TD1 2006 Personal Tax Credits Return form states "Complete this form if you have a new employer ... and give it to your employer". The 41 persons signed the Employee Undertaking form, certifying that they had read Distinction's Rules of Conduct and employee obligations, that they agreed to comply with them, and that they understood that they could "lose their job" if they failed to do so. Again, they signed this document on the "Employee's signature" line. Finally, the 41 persons even requisitioned a uniform to be worn when they commenced to perform their cleaning work.

28. In view of all this I am satisfied, on the facts of this case, that a *bona fide* employment relationship had been created as of August 3, 2006, even though the 41 persons had not yet commenced to actually perform any work or collect any wages as of August 3, 2006. It is sensible, acceptable and necessary that Distinction would hire these persons prior to August 6, 2006 so that Distinction would have a workforce in place and ready to commence to perform the work as of August 6, 2006.

29. I am also satisfied that, on the facts of this case, I do not need to exercise my discretion to nevertheless declare that Local 183 was not, as of August 3, 2006, entitled to represent the 41 persons, in order to protect against the mischief raised by CUPW, as discussed in paragraph 20 above. As stated above, on the facts of this case, I am satisfied that the 41 persons were, for the purposes of section 66, employees of Distinction as of August 3, 2006 and did subsequently perform the cleaning services at Gateway and South Central. Several of them had signed new Local 183 membership cards. This is not a case where persons were hired, on paper only, but were not subsequently used to perform the bargaining unit work or were not aware that they would be represented by the union with their new employer. In such a case, there may be grounds for the Board to exercise its discretion under section 66 to declare that the union did not, as of the date that the VRA was entered into, represent the employees in the bargaining unit. However, I am satisfied that the mischief expressed by CUPW does not exist in this case. It may be that in another case, on different facts, the Board could be concerned that the mischief discussed above, or some other reason for issuing the section 66 declaration, may exist. In such a case, it could be appropriate for the Board to exercise its discretion to declare that the union was not, at the date the VRA was entered into, entitled to represent the persons in the bargaining unit. However, I find that is not required in this case.

30. I find that the *Canarm, Kawartha Dawns* and *Coreslab Structure* cases relied upon by Local 183 are not helpful in determining the issue in this case. Those cases confirm the Board's practice that, for the purpose of determining whether a person is entitled to vote in a certification vote, employees having an employment relationship on the certification application filing date

includes employees who were not at work on that date, so long as there is a reasonable expectation of their return to employment. These cases address the situation where the employee is absent on the application filing date. These cases do not address the situation that would be analogous to this case, which is where the persons have not yet performed any work as of the application filing date.

31. I also find that the cases relied upon by CUPW are distinguishable. The three certification cases, *Copernicus Lodge*, *Burnaby Winter Club* and *Spectra Restaurant* consider different facts and issues. The offer of employment in *Copernicus Lodge* was conditional, and the persons had not all provided the employer with the documentation that could satisfy the conditions. On these facts, the Board ruled that the persons were not yet employees as of the date the application for certification was filed. In this case, the offer of employment was not conditional upon anything, and the persons completed and returned several forms confirming their acceptance of the offer.

32. In *Burnaby Winter Club* the British Columbia Labour Relations Board held that persons who had been, just prior to the date that the application for certification was filed, orally advised that they were hired, but who had only completed an application for employment, and no other documentation, and who had not yet actually commenced to perform any work, were not yet employees for the purpose of the application for certification. Again, these facts are different from the facts in this case.

33. In *Spectra Restaurants* the B.C. Labour Board refers to a case that suggests that a person who has been hired but has not yet commenced work could be considered to be an employee for the purpose of an application for certification. In this regard, *Spectra Restaurants* somewhat supports the position of Distinction and Local 183. However, the B.C. Labour Board goes on to rule that the three persons who had been hired prior to the application filing date, but had not yet commenced to perform work as of that date, were not yet employees for the purpose of the application for certification. For the reasons set out in paragraph 29 above, I do not find that I need to follow this case. The mischief that could exist in such an application for certification does not exist in this case.

34. Similarly, I find that the cases dealing with probationary employees, *Tropical Inn*, *Swiss Chalet* and *PFC Packaging* are distinguishable because they deal with the issue of when a probationary period should be considered to have commenced or ended under the terms of a collective agreement. It is important in these cases that the employer has actually been able to observe and evaluate the probationary employee's work. Accordingly, the issue in these cases is sufficiently different so as to render these cases of little assistance.

35. Finally, I find that *Schwartz* is distinguishable because the *Schwartz* case only pertains to the very narrow issue of whether, for the purpose of claiming a settlement payment as a retirement allowance under the *Income Tax Act*, the claimant must have actually commenced to perform work.

36. The last remaining issue is whether, notwithstanding my conclusions discussed above, the parties to a VRA should nevertheless be required to wait until after the employees have actually commenced to perform work prior to their entering into the VRA. This would at least provide another union, such as CUPW in this case, with an opportunity to file an application for

certification that would be timely. I do not find that it is necessary to impose this requirement, for the following reasons.

37. Unions are always entitled to, subject to section 66, enter into VRA's, which VRA's will affect the rights of other unions. Parties are entitled to take *bona fide* pro-active steps, such as hiring employees and signing VRA's, to prepare for changes in the workplace and the commencement of work.

38. In this case, both CUPW and Local 183 were aware that the cleaning contracts were being transferred from J & A to Distinction, with the result that the work would no longer be covered by their collective agreements with J & A. CUPW had the same opportunity that Local 183 had to negotiate a VRA with Distinction that would have preserved its work at South Central, or would even have applied to Gateway and other locations as well. There is no allegation that Local 183 or Distinction committed any violations of the Act. There is no reason to set aside what transpired.

39. At the next day of hearing, CUPW may make any challenges it may have to Local 183's membership evidence. CUPW is directed to file, not less than two weeks before the next hearing date, the grounds, if any, upon which it will be challenging the membership evidence of Local 183.

40. Once any challenges to Local 183's membership evidence are resolved, I will be able to determine whether Local 183 was, on August 3, 2006, entitled to represent the 41 employees of Distinction in the VRA bargaining unit.

1512-07-U; 1513-07-U Dudley Wright, Applicant v. Local 873 of International Alliance of Theatrical Stage Employees, Responding Party

Duty of Fair Representation – Duty of Fair Referral – Order for Productions – The employee brought an application alleging a breach of the union's duty of fair representation and its duty of fair referral – The Board held that while the applicant alleged a number of misdeeds on the part of union officials in the course of internal union proceedings involving him, none were alleged in the context of his employment relationship as a bargaining unit employee with an employer bound to the collective agreement – As a result, the Board dismissed the s. 74 application for failure to disclose a *prima facie* case – The Board held that the s. 75 application should proceed because the applicant had been suspended as a union member thereby removing him from the hiring hall list – Since the applicant suggested that his suspension was improperly motivated, an explanation will be required from the union regarding its motivations and thought processes for having suspended the applicant – On this point, as the Board stated in *Danillo Buttazzoni*, [2004] OLRB Rep. May/June 499, it would not entertain arguments about the procedural aspects of, or adherence to, a trade union's constitution by the union's decision-makers who determined the expulsion or suspension of the member – The Board also ordered that the union provide the applicant with copies of its work assignment records in order to confirm or deny his claim that more junior employees were given work assignments while he was bypassed – Matter continues

BEFORE: *Patrick Kelly*, Vice-Chair.

DECISION OF THE BOARD; September 11, 2007

1. These are an application alleging a breach of the responding party's duty of representation under section 74 (Board File No. 1512-07-U) and a breach of the responding party's duty of referral under section 75 (Board File No. 1513-07-U) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended ("the Act").

2. Sections 74 and 75 of the Act read as follows:

> **74.** A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.
>
> **75.** Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith.

3. By decision dated August 9, 2007, I directed the applicant to file written submissions with respect to several preliminary issues raised by the responding party ("the union"). The Board is in receipt of those submissions.

4. The background underlying those complaints was set out in my August 9, 2007 decision as follows:

> 3. By way of background, these applications, which rely on an identical set of facts, deal with the applicant's internal confrontations with the union, initiated by the applicant's long-held perception "over the years" that he was not receiving a fair share of job assignments from the union, and his decision in January 2005 to lay charges under the union's constitution and by-laws against the union's president, past president and business agent. Those officials were all acquitted following an internal union trial. The acquittals did not sit well with the applicant, and he filed new internal charges against the union's president.
>
> 4. More recently, the applicant alleges that union officials removed him from a job assignment in early September 2006 based upon false information from an anonymous source. The applicant says that the union was motivated in doing so because of the events outlined in paragraph 3 above. That removal was followed by an alleged physical threat against the applicant by his union representative while working on another assignment a few days later. The applicant complained about the threat, and found himself suspended by the union president, pursuant to a power conferred on the president by the union's constitution to suspend a member believed to be placing the Local in a position of extreme liability.
>
> 5. The applicant believes the suspension, which effectively bars him from any job referrals, was also imposed because of the events described in paragraph 3 above. In any event, the applicant soon found himself the subject of internal union charges and

> facing a trial, which in the end did not materialize. The charges against him were dropped, and his suspension was lifted, following which the applicant registered with the union's hiring hall. He claims he has received no job assignment since then. He believes other, more junior employees, have been assigned work, contrary to the union's normal referral process.

5. I turn next to the preliminary issues.

i. The identity of the responding party

6. Having regard to the submissions of the applicant, the style of cause is hereby amended to reflect the responding party trade union against whom the application is brought: Local 873 of International Alliance of Theatrical Stage Employees. In addition, given the applicant's concession in its written submissions, union representatives Mimi Wolch, Robert Hall and Robert DaPrato are hereby removed as parties.

ii. Whether the section 74 application discloses any violation of section 74

7. In my decision of August 9, 2007, I wrote at paragraph 6(iii):

> ... The applicant has alleged no facts that relate to the union's representation of the applicant *vis-à-vis an employer party* to the collective agreement that applies to the applicant. The applicant has alleged a number of misdeeds on the part of union officials in the course of internal union proceedings involving the applicant, but none in the context of his employment relationship as a bargaining unit employee with an employer bound to the collective agreement. In my view, subject to what the applicant may have to say in writing, the section 74 application ought to be dismissed for failure to disclose a violation of the union's duty of representation.

Counsel for the applicant takes issue with the views I expressed in the above excerpt, for the following reasons. Mr. Wright was covered by the terms of the Feature Film Agreement and other Local agreements between the union and various companies for whom Mr. Wright worked or hoped to work. However, the union's suspension of the applicant – an internal union response pursuant to its constitution and by-laws, which action Mr. Wright claims was retaliatory and motivated by bad faith - made it impossible under the terms of those agreements for Mr. Wright to gain employment or to be assigned by the union through its hiring hall. Moreover, the union, not the respective employers, unilaterally removed the applicant from one job site in Peterborough, and then effectively expelled him from another in Toronto when it took the decision to suspend him. This action, the applicant argues, runs contrary to the collective agreement's provision allowing the union to demand the termination of a member of the union who is determined by the union to not be in good standing. In addition, it violates the collective agreement's provisions regarding safe working conditions, which the applicant says the union should have invoked, thus involving his employer, once he complained about alleged threats to his physical well-being from his union steward. In these ways, the applicant submits, the union failed in its duty to represent Mr. Wright vis-à-vis the respective employers.

8. I am not persuaded by these submissions. This section 74 complaint is at its core not about the quality of the union's representation of Mr. Wright in relation to an employer, but rather about the union's internal responses and actions taken against the applicant. An incidental (albeit

not insignificant) effect of those internal decisions is that Mr. Wright was left without the benefit of the terms and conditions of the collective agreements that appear to apply to him. While the Board may, for purposes of section 75, examine the motives and thought processes of the union's decision-makers that caused the removal of a member from the hiring hall list, it strains the scheme of section 74 to suggest, as the applicant appears to do, that the union was statutorily obligated to trigger certain provisions of the collective agreements, and to have thereby involved the respective employers, to deal with what is essentially an internal dispute between the union and Mr. Wright.

9. For these reasons, I see no application of section 74 to the factual context of these matters. There is no real issue of the representation of Mr. Wright vis-à-vis other employers. Accordingly, the application in Board File No. 1512-07-U is dismissed for failure to disclose a *prima facie* breach of section 74.

iii. Whether the section 75 application discloses any violation of section 75

10. I am not persuaded that a similar basis exists for the preliminary dismissal of Mr. Wright's section 75 application. As the Board recently pointed out in *Paul L. Stewart* (unreported decision dated August 3, 2007, Board File No. 3071-06-U), "[s]omeone expelled from a union that is subject to section 75 who is challenging the union's conduct leading up to the expulsion is a person to whom the union owes a duty under section 75, at least to the point of expulsion" (¶19). Mr. Wright was suspended as a union member, which had the effect of removing him from the hiring hall list. He appears to suggest that his suspension was improperly motivated, due to his previous dealings with the union. That requires an explanation from the union. That is, the union must explain its motivations and thought processes for having suspended Mr. Wright, thereby removing him from the hiring hall list. Having said that, the applicant should be aware that the Board has previously stated it will not entertain arguments about the procedural aspects of, or adherence to, a trade union's constitution by the union's decision-makers who determined the internal expulsion or suspension of the member: see *Danilo Buttazzoni*, [2004] OLRB Rep. May/June 499 (June 7, 2004).

11. For these reasons, the section 75 application is to be processed in the normal course.

iv. The issue of delay

12. The applicant concedes that the focus of the applicant's complaint deals with the period from September 2006 forward. In those circumstances, as I indicated in my previous decision, I do not think that the filing of the applications on July 31, 2007 constitutes undue delay. Therefore, I reject that as a basis for dismissing either application.

v. Particulars

13. I directed the applicant to provide the basis for his belief that other, more junior employees, have worked while he has been bypassed. The applicant says that a non-member replaced him when he was removed by the union from his Peterborough assignment, and that a less junior member replaced him in Toronto when he was suspended. He also claims that the union assigned "Jumper" work opportunities to more junior employees from September 2006 until the early part of 2007, and that he should have been eligible for work on the production of

Hair Spray, but he does not know the identity of those who obtained that work, and says only the union has that information. Accordingly, the applicant submits that the union should produce the work records from September 8, 2006, something he has requested previously from, but been denied by, the union.

14. It seems to me that the information concerning who, if anyone, was granted work opportunities as a result of Mr. Wright's removal from work sites or his subsequent suspension, is arguably relevant in the section 75 application, particularly with respect to the issue of remedy. If the treatment of the applicant was for a legitimate internal union purpose, then the section 75 application will fail and it will not matter if anyone derived work opportunities as a result of the applicant's removal from the hiring list. However, if that is not the case, then the lost work opportunities, if any, may form the basis for a claim in damages.

15. Accordingly, the union must provide to the applicant copies of its work assignment records in the wardrobe and costume area from September 8, 2006 forward. The copies are to be provided on a date mutually agreed between counsel. In the alternative, counsel may seek the Board's intervention to impose a date for compliance with this order.

16. The union is to file and deliver its response to the section 75 application in Board File No. 1513-07-U within ten days of delivery of this decision.

3118-06-ES FAG Aerospace Inc., Applicant v. Chris Neal, and Director of Employment Standards, Responding Parties

Employment Standards – Wilful Misconduct – The employer sought review of an ESO's decision that the employee was terminated for exercising his rights under the emergency leave provisions of the ESA – The employer had an Employee Handbook which included policies on absenteeism, lateness and discipline – The employee had three disciplinary infractions within 12 months for "blameworthy" absences – The employee was disciplined a fourth time for missing the first three hours of his shift – The Board found that the employee's fourth absence was because he had slept in and not because he was caring for his son – The Board held that the employee was not attempting to request or claim an emergency leave, or any other right under the ESA – The Board further held that the employee's fourth absence, while blameworthy, did not constitute wilful misconduct – Order for compensation was reduced to an order to pay termination and severance pay – Application allowed, in part

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *John M. Skinner, Al Beck, Tricia McCarthy* and *Dan Dupuis* appearing for the applicant; *Chris Neal* appearing on his own behalf; *Alicia Gordon-Fagan* appearing for the Ministry of Labour.

DECISION OF THE BOARD; October 30, 2007

1. This is an employer application under the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended (the "Act") for review of Order to Pay No. 30234.

Background

2. The Employment Standards Officer ("the Officer") determined that the responding party employee, Chris Neal ("Mr. Neal"), was terminated by the applicant (or "the company") as an act of reprisal for having exercised his rights under the emergency leave provisions in section 50 of the Act. As a result, the Officer ordered substantial compensation under several headings, and ordered the applicant also to pay severance pay.

3. The applicant takes the position that there was no reprisal, and that Mr. Neal was terminated solely for repeated blameworthy conduct.

The Evidence

4. The following individuals testified for the company: Alan Beck, the Director of Human Resources; Tricia McCarthy, Human Resources Leader reporting to Mr. Beck; and Dan Dupuis, Mr. Neal's direct supervisor at the time of his termination.

5. Mr. Neal testified on his own behalf.

6. There were no material discrepancies in the testimony of the witnesses.

7. The applicant manufactures parts for businesses in the aerospace and automobile industries. It employs about 1000 individuals. Mr. Neal was employed as a CNC machinist from November 13, 2000 to April 4, 2006.

8. The company provides each employee a copy of its Employee Handbook. The Employee Handbook deals with a number of subjects, including emergency leave. The emergency leave policy essentially mirrors the provisions in section 50 of the Act. At the time of his termination, Mr. Neal had taken many emergency leaves of absence over the course of his employment.

9. The Employee Handbook sets out a policy on discipline. It provides that four disciplinary infractions within any twelve-month period will lead to dismissal, but that, depending on the severity, a single infraction can lead to suspension or dismissal. As of April 3, 2006, the date on which the circumstances giving rise to Mr. Neal's termination first arose, Mr. Neal had three disciplinary infractions within a twelve-month period. He had also been counselled about the possibility of discipline for excessive absenteeism prior to the imposition of the first of these disciplinary infractions.

10. The Employee Handbook also deals with absenteeism and lateness policies. The absenteeism policy stresses the importance of regular attendance and sets out in detail how an employee should report an absence. It also mentions that poor attendance may trigger a

counselling process and/or lead to discipline[1]. The lateness policy warns of the disciplinary consequences of excessive lateness, and defines lateness as reporting for work between three minutes and up to three hours after the start of a scheduled shift. A lateness in excess of three hours from the start of a shift is considered an absence. Mr. Neal's three disciplinary infractions in the twelve-month period preceding his termination were all for "blameworthy" absences, that is absences within the control of the employee and for which no satisfactory substantiation is provided to the supervisor. He received a written warning for each of the first two such absences, and a two-day suspension for the third, in accordance with the company's discipline policy. At the time he received these disciplinary penalties in the latter half of 2005, he had already used up all ten of his emergency leave days that calendar year.

11. At around 7:30 a.m., on April 3, 2006 – 30 minutes after the start of his scheduled shift – Mr. Neal called his supervisor, Mr. Dupuis, and reported that he had forgot to change his clock, and had slept in as a result. He promised to come to work shortly. Mr. Dupuis expected to find Mr. Neal on the shop floor at 9:45 a.m. when he went to speak to him, but Mr. Neal had not arrived. Mr. Dupuis tried to reach Mr. Neal by telephone, but to no avail. At 10:30 a.m. Mr. Dupuis checked his voice mail and discovered a message from Mr. Neal that had been left at 10:22 a.m. In it, Mr. Neal explained that he had fallen back to sleep since his last conversation with Mr. Dupuis, and that he realized that, given the passage of more than three hours since the start of his shift, he would be considered absent. He asked Mr. Dupuis to call him back and advise him what he needed to do in order to return to work.

12. Mr. Dupuis decided to seek counsel from Human Resources. He informed his Human Resources Leader, Ms. McCarthy, of the details of Mr. Neal's lateness, and sent her a copy of Mr. Neal's voice message. He also informed Ms. McCarthy that Mr. Neal had three disciplinary notices on file on account of absences, and that he had been coached regarding his attendance. Ms. McCarthy advised Mr. Dupuis to contact Mr. Neal and tell him to come to work, and to issue Mr. Neal a discipline investigation notice when he arrived.[2] Mr. Dupuis called Mr. Neal at around 11:15 a.m. and advised him accordingly. Mr. Neal asked what sort of documentation he was required to provide, and indicated a desire to speak to someone in Human Resources. Mr. Dupuis referred him to Ms. McCarthy.

13. Mr. Neal contacted Ms. McCarthy. He asked her what he had to do to stay at work. Ms. McCarthy asked if what he meant was how he could avoid termination. He replied that that was what he meant. Ms. McCarthy asked him if he appreciated that should the investigation determine that he ought to be warned, it would result in his termination. He replied he understood that. She told him that the investigation would proceed, and that he ought to report

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[1] Once employees reach six absences in any twelve month period, they must engage in a coaching session with their immediate supervisor. If at that point, the employee has used all ten of the allotted emergency leave days, he or she is told in the coaching session of the consequences of excessive absenteeism, namely that any subsequent absence in the same twelve month period will result in disciplinary action. On the other hand, if the employee still has emergency leave days to his or her credit, then the supervisor is required to tell the employee to provide proof of each subsequent absence in the twelve-month period. If such an absence is not substantiated to the company's satisfaction, the absence will be considered "blameworthy", and discipline ensues.

[2] A discipline investigation notice tells the employee that the company is investigating an alleged infraction, specifies the nature of the infraction, and warns of the possibility of discipline if the investigation so warrants.

for work the next day. Mr. Neal asked repeatedly what he had to do to keep his job. Ms. McCarthy reminded Mr. Neal of the definition of an emergency leave, and told him that sleeping in did not constitute grounds for such a leave. Mr. Neal stated that he was simply being honest about having slept in. He did not ask for an emergency leave of absence. Ms. McCarthy replied that there would be a review of his file, and that he should report the following day.

14. Following their telephone conversation, Ms. McCarthy reviewed Mr. Neal's personnel file to ensure that he had received appropriate counselling in the past about his attendance, and to confirm his disciplinary record. Her review corresponded to what she had been told by Mr. Dupuis.

15. On April 4, 2006, Mr. Neal reported for work. Mr. Dupuis handed him a partially completed notice of investigation, setting out the alleged infraction ("blameworthy absenteeism"). Mr. Neal provided Mr. Dupuis with a handwritten note, which read:

> To whom it may concern
>
> Chris slept in on Monday, due to the fact that both his son and I were up all night vomiting. We all woke up at 10:15.
>
> Sorry for the Inconvenience
> Wendy

Mr. Dupuis understood this to be a note written by Mr. Neal's common-law spouse. Mr. Dupuis told Mr. Neal that he would forward the note to Human Resources, and that the company would review it. Mr. Neal offered no further information about the note or the circumstances described in it, and Mr. Dupuis made no inquiries of Mr. Neal.

16. Mr. Dupuis forwarded the note to Ms. McCarthy. She read the contents and decided that it did not constitute grounds for an emergency leave. She further concluded, based on the information that Mr. Neal had provided to Mr. Dupuis and to her on April 3, 2006, that the note was a fabrication of the reasons for Mr. Neal's absence. She reasoned that Mr. Neal had had ample opportunity the day prior to provide the explanation set out in the note, and had not done so. Accordingly, she instructed Mr. Dupuis to issue a fourth disciplinary notice to Mr. Neal for blameworthy absenteeism, and to advise him of his termination.

17. A meeting followed, attended by Mr. Dupuis; Mr. Dupuis's manager, Dino Colalillo; Mr. Neal's former supervisor, Brian Miles; Mr. Neal; and Nick Chiocchio, a co-worker of Mr. Neal's and the employee representative entitled by company policy to represent the non-union employees in disciplinary matters. Mr. Dupuis informed Mr. Neal of the outcome of the company's investigation, and either Mr. Dupuis or Mr. Colalillo explained to Mr. Neal that as a result of his fourth disciplinary notice, he was terminated. Mr. Neal made no reply[3]. Mr. Colalillo escorted Mr. Neal to his locker to clean out his belongings, and off the company's premises.

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[3] According to Mr. Neal, neither he nor Mr. Chiocchio were given an opportunity to say anything.

18. Mr. Neal testified that his three-year old son had a history of gastrointestinitis, which caused him great difficulties and pain making a bowel movement, which in turn interfered with his normal sleep patterns. This caused many sleepless nights for his parents. Apparently, the problem became particularly acute in 2005, which prompted Mr. Neal to seek and obtain a change in shift to midnights from days from his then supervisor, Brian Miles.

19. Mr. Neal testified further that on the evening of April 2, 2006, his wife was ill, and so he spent the entire night with his son. Mr. Neal did not say in his evidence why it was necessary to do so, but presumably it was related to the gastrointestinitis. In any case, Mr. Neal was exhausted by his nocturnal activities, and slept in on the morning of April 3, 2006. After promising Mr. Dupuis that he would be in to work shortly, Mr. Neal says he made the mistake of lying down again and inadvertently falling asleep again. By the time he awoke, he realized he would be more than three hours late for work, and thus would have another absenteeism occurrence on his record. He testified that he realized he needed to substantiate his absence, and he discussed with Mr. Dupuis and Ms. McCarthy the documentation necessary to explain his actions. He testified further that he knew he would not be able to book a medical appointment on April 3, 2006 for his son, and that an appointment was arranged for April 4, 2006. Finally, Mr. Neal testified that he had vacation days to his credit, and that he was aware other employees had used vacation days in similar circumstances, but he did not ask either Mr. Dupuis or Ms. McCarthy for a vacation day to cover his absence on April 3, 2006. He says it should have been apparent to Mr. Dupuis and Ms. McCarthy that by asking them what proof was required to substantiate his absence on April 3, he was seeking an emergency leave.

20. Mr. Neal provided the Board with a medical note dated April 4, 2006 from a physician stating that his son was having "severe constipation issues" resulting in Mr. Neal being deprived of sleep at night. Mr. Neal says that he sent a copy of the note to the company's Human Resources department within two weeks of his dismissal. None of the company's witnesses were asked about such a medical note in the course of cross-examination, and none of them made any reference in their examination-in-chief to the receipt of a note after Mr. Neal's dismissal.

Analysis and Conclusions

21. Section 50 of Part XIV of the Act deals with personal emergency leave. It reads:

> **50.** (1) An employee whose employer regularly employs 50 or more employees is entitled to a leave of absence without pay because of any of the following:
>
> 1. A personal illness, injury or medical emergency.
>
> 2. The death, illness, injury or medical emergency of an individual described in subsection (2).
>
> 3. An urgent matter that concerns an individual described in subsection (2).
>
> (2) Paragraphs 2 and 3 of subsection (1) apply with respect to the following individuals:

1. The employee's spouse.

2. A parent, step-parent or foster parent of the employee or the employee's spouse.

3. A child, step-child or foster child of the employee or the employee's spouse.

4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.

5. The spouse of a child of the employee.

6. The employee's brother or sister.

7. A relative of the employee who is dependent on the employee for care or assistance.

(3) An employee who wishes to take leave under this section shall advise his or her employer that he or she will be doing so.

(4) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

(5) An employee is entitled to take a total of 10 days' leave under this section in each calendar year.

(6) If an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day's leave on that day for the purposes of subsection (5).

(7) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave.

22. The reprisal provisions of section 74 of the Act relevant to this matter read:

74. (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,

(a) because the employee,

(i) asks the employer to comply with this Act and the regulations,

(ii) makes inquiries about his or her rights under this Act,

...

(iv) exercises or attempts to exercise a right under this Act,

...

(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or

(2) Subject to subsection 122(4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer.

23. The question to be determined is whether or not the company terminated Mr. Neal because he sought a personal emergency leave of absence or otherwise sought information about or the protection of the Act. The company has the burden to establish that question in the negative. In my view, it has done so. I am persuaded on the basis of the uncontradicted evidence that the company formed the view that Mr. Neal's absence on April 3, 2006 was due to having slept in, and that Mr. Neal was not being truthful when he submitted the note from Wendy explaining the reason why he had slept in. Thus, his absence was justifiably treated as blameworthy, and it constituted his fourth infraction, which company policy dictates must result in termination.

24. I have no doubt that Mr. Neal faced considerable challenges with respect to his son's health, or that he lost plenty of sleep as a result. Although Mr. Neal testified that he spent the better part of the night and early morning of April 3, 2006 caring for his son, that is not what he told the company. He had three conversations with company officials on the morning of April 3, 2006, two with Mr. Dupuis, and one with Ms. McCarthy. At no time did he mention that he had been up all night caring for a sick child. His explanation was that he had simply failed to change his clock. The impression he gave both Mr. Dupuis and Ms. McCarthy on April 3 was that the entire fault for his lateness was attributable to his own forgetfulness. Ms. McCarthy opened the door a little for some alternative explanation when she mentioned the definition of an emergency leave, but Mr. Neal did not offer any further information that might suggest he wanted or warranted an emergency leave, or take issue with Ms. McCarthy's assertion that he did not qualify for such a leave on the basis of having slept in.

25. On April 4, 2006, Mr. Neal offered a rationale for sleeping in that he had not previously provided. His wife vouched for him that he had been kept up all night because she and her son were sick. In my view, Ms. McCarthy was not unjustified in her suspicions that the note was a fabrication, because it did not coincide with Mr. Neal's explanation on April 3, 2006, and because Mr. Neal had had plenty of opportunity to provide the information contained in the note during his conversation with her the day prior, and had failed to do so.

26. I do not know why Mr. Neal did not explain his night-time activities with his son when he had the chance to do so on three occasions on April 3. He apparently knew he was in difficulty with his employer, given the state of his disciplinary record. He had emergency leave days remaining to his credit. He knew and appreciated what emergency leave days were for, and how to claim them because he had taken a good number of such days off in the past. And yet he offered no details about his absence in conversations with Mr. Dupuis and Ms. McCarthy other than blaming his alarm clock. Only on April 4, perhaps realizing his job hung in the balance, he presented a note prepared by his spouse which added new facts (but left out any express reference to Mr. Neal caring for his sick son all night). Finally, as many as two weeks after his termination, Mr. Neal claims to have sent the company a doctor's note. The note was not specific that

Mr. Neal's son had been ill during the early morning hours of April 3. It simply confirmed that the son's affliction interfered generally with Mr. Neal's sleep. In any event, there is no evidence that the company ever received the doctor's note.

27. The company has established that it did not make a reprisal against Mr. Neal for the exercise of his rights under the Act. There simply is no evidence that Mr. Neal was attempting to request or claim an emergency leave, or any other right under the Act. Ms. McCarthy turned her mind to the possibility that Mr. Neal qualified for an emergency leave, even though he had not asked for one. She determined that the real reason for his absence was his failure to adjust his alarm clock, and that the note from Wendy was simply a means of diverting the company's attention from the true basis for the absence. Mr. Neal did not attempt to elaborate on the note from his spouse. He merely handed the note to Mr. Dupuis and said nothing further. Neither Mr. Dupuis nor Ms. McCarthy were obligated to seek further evidence from Mr. Neal, though the Act contemplates such a possibility. There was nothing to suggest that they were being wilfully blind to any facts or to their nuances.

28. Counsel for the applicant submitted that in the absence of any evidence of a reprisal under section 74 of the Act, the entire order to pay must be rescinded. I do not think that is correct.

29. The applicant did not take the position in this matter that Mr. Neal's absence from work on April 3, 2006 constituted wilful misconduct thus disentitling him to notice of termination (or termination pay) and to severance pay. It contended that Mr. Neal's conduct was blameworthy. Wilful misconduct within the meaning of the Act comprises intentional and egregious behaviour. In my view, Mr. Neal's failure to report to work because he overslept does not fall into that category.

30. The Officer found that Mr. Neal was entitled to a total of $38,209.54, inclusive of severance pay equivalent to five and 4/12 weeks' wages ($4,930.13). Moreover, it is clear from the Officer's narrative report that he would have ordered termination pay equivalent to five weeks' wages ($4,622) but for his finding that Mr. Neal was entitled to a significantly larger amount in damages for the amount of time it should have taken him to find another job. The Officer awarded the greater of the two amounts. The applicant took no issue with the Officer's calculation in respect of termination and severance pay.

Disposition

31. For these reasons, the application is allowed in part. The order to pay is hereby reduced to an order to pay termination pay and severance pay only.

32. The Director of Employment Standards ("the Director") is authorized to distribute from the $10,000 paid in trust: $9,552.13 (severance pay of $4930.13 and termination pay of $4,622) to Chris Neal; and to retain the remaining $447.87 towards the administrative costs, which I assess to be $955.21.

33. The applicant is directed to pay forthwith to the Director $507.34 with respect to the outstanding administrative costs.

1776-04-R; 1778-04-R; 1794-04-R; 1796-04-R; 1797-04-R **Greater Essex County District School Board**, Applicant v. International Brotherhood of Electrical Workers, Local 773, Responding Party; Greater Essex County District School Board, Applicant v. The International Union of Bricklayers and Allied Craftsmen, Local 6, Responding Party; Greater Essex County District School Board, Applicant v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552, Responding Party; Greater Essex County District School Board, Applicant v. The International Union of Painters and Allied Trades, Local 1494, Responding Party; Greater Essex County District School Board, Applicant v. Labourers' International Union of North America, Local 625, Responding Party

Bargaining Rights – Termination – During the on-going litigation of this non-construction employer application, the Board was asked to consider whether certain construction work undertaken by the School Board as part of a contract for services funded by Human Resources Development Canada operated to exclude the School Board from the definition of a non-construction employer – The Board found that it was possible for an entity such as the School Board to be a construction employer, although its principal business is not in the construction industry – Further, the HRDC, a branch of the federal government to which the *Labour Relations Act, 1995* specifically does not apply, was an unrelated party for purposes of the present analysis – The Board held that (1) the School Board did perform some construction work as part of its contract with HRDC, but the contract was to provide educational services and the building work was merely incidental to the fulfillment of the terms of the contract; (2) the payment the School Board received from HRDC did not, in the Board's view, constitute compensation from an unrelated person for work in the construction industry; (3) consequently, the limited construction work did not preclude the School Board from continuing with its assertion that it was a non-construction employer – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Leonard Kavanaugh, Suzanne Porter* and *Penny Allen* for the applicant; *Stephen Wahl, Sol Furer, Tim Snaden, K. Elliott, William Dunn, Mike Gagliano* for the responding parties.

DECISION OF THE BOARD; September 24, 2007

1. This decision deals with one issue that arises in each of these five applications. The applications are brought by the Greater Essex County District School Board ("the School Board") pursuant to section 127.2 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The School Board seeks a declaration that it is a non-construction employer within the meaning of section 126.1 of the Act and that the five responding parties (the "Unions") no longer represent their respective trades employed by the School Board in the construction industry.

2. The case has gone on for some time, consisting of the evidence of Ms. Penny Allen, Superintendent of Business for the School Board. The parties agreed to suspend the evidence in the main part of the case to deal with one discrete evidentiary matter.

3. That one issue relates to certain work done under the auspices of a program funded by Human Resources Development Canada ("HRDC"). Since that time, responsibility for such programs has been transferred to the provinces and is, in Ontario, the responsibility of the Ministry of Training Colleges and Universities. However, throughout the relevant period, the funding came from HRDC. During the course of this program, the School Board undertook certain construction work by engaging contractors to do it. HRDC paid for this construction work. The parties have asked the Board to examine only this portion of the evidence.

4. The definition of a non-construction employer is:

> An employer who does no work in the construction industry for which the employer expects compensation from an unrelated person.

The parties agree that, given the wording of the definition, if the employer performs *any* such work, then it does not fall within the definition of a non-construction employer and the applications must be dismissed. The parties have agreed to ask the Board to examine this evidence by itself to determine whether or not the relationship with HRDC places the School Board outside of the definition of non-construction employer. If it does, the case will be dismissed; if it does not have that effect, the case will continue.

5. The School Board is, as its name suggests, the school board with responsibility for all of Essex County, including the City of Windsor. It is responsible under the *Education Act* for providing instruction to school-age students at both the primary and secondary levels. It also operates a number of programs that are not statutorily mandated, but are directly (as in the case of an alternative high school program) or indirectly (as in its Adult and Continuing Education program) related to education.

6. Adult and Continuing Education is a separate department within the School Board. There is a principal of Adult and Continuing Education, Ms. Debra DiDomenico. The School Board's Adult and Continuing Education department is linked, to some extent, to the curriculum of schools provided under the *Education Act*, although that is not its primary focus. Entry into these programs begins with an assessment of basic language skills. That may lead to literacy or English as a Second Language courses, or it may lead the participants directly to "credit courses" that will lead to a Grade 12 certificate. Enrolment in such courses is the ultimate aim, as that objective is perceived to be the minimum education level required by employers in the Windsor and Essex area.

7. The HRDC's program is similar. Its exclusive focus is unemployed workers, although directing participants to high school courses may be one of the means to enhance the employment potential of the participant. Since the focus is on employment, the initial assessment relates to academic assessment and to career assessment. Intake workers examine the academic and work histories of a participant, his or her current skill set and most recent employment. The services offered include straightforward employment counselling, training in resume writing and job search skills, provision of internet and other resources to assist in locating employment and so on. If the participant's current skill set is inadequate to secure any or the desired level of employment, he or she may be referred to various training and education programs, including the Adult and Continuing Education program of the School Board. Obviously, there is a close connection between these two programs, but they each start with a different focus.

8. HRDC did not, nor did it wish to, provide the service directly. It issued a Request For Proposal seeking a service provider to provide the services deemed necessary or desirable. The School Board responded to the RFP because of the obvious fit with its Adult and Continuing Education program. Ultimately, the School Board and HRDC entered into two sets of agreements, one located in Windsor and one located in Leamington. The last of the series of contracts for the Leamington location (which takes place, in part, beyond the period relevant for this proceeding) is the 2004-2005 Agreement. The summary of the activities is described as follows:

> To assist 1400 unemployed persons to determine employment needs ... This objective will be met by providing one-on-one assistance to develop personal return to work action plans, and interventions to resolve: career planning, job search, skill enhancement and employment maintenance barriers.

9. The contract relating to the Windsor location contains the following similar objectives:

> Over a nine-month period ... 7200 unemployed clients will receive assistance to prepare for and obtain meaningful employment. This will be accomplished by providing employment focused group sessions and one on one employment assistance.

The program is broken down into a number of stages, which are described in considerable detail in the Agreement. It is sufficient to quote the headings here:

(a) Initial Screening
(b) Needs Identification Services
(c) Employment Counselling Services

    (1) Career Planning
    (2) Skill Enhancement/Training
    (3) Job Search
    (4) Employment Maintenance

(d) Case Management and Follow-Up.

The final heading is entitled "Means by which Success is measured", which has to do with the number of clients assisted and the results of the assistance within the time period of the Agreement.

10. Because, for obvious reasons, the School Board did not wish to mix school-age students with a general adult population, the HRDC program was carried on in two rented premises in Windsor and Leamington: 1410 Ouellette Avenue in Windsor and 215 Talbot Street East in Leamington. The Agreements were structured in a manner typical of governmental funding agreements. Aside from providing for the services to be delivered and the number of persons to be served, the Agreement provides a detailed breakdown of the costs HRDC will pay for. A typical schedule of the budget in the various Agreements is as follows:

WAGES
- Project Staff
- Project Staff MERCs
- Project Participants
- Project Participants MERCs

CAPITAL COSTS

SUPPORT TO INDIVIDUALS
- Assistance to Persons with Disabilities
- Living Expenses
- Dependant Care
- Instruction Costs
- Personal Support Costs
- Tuition Costs - Public
- Tuition Costs – Private

PROJECT OVERHEAD (ACTIVITY) COSTS
- Professional Fees
- Travel Costs
  - Participant/Student Costs
  - By Project Staff/Project Management/Volunteers
  - By Contractors (if separ. from Professional Fee)
- General Project Costs
  - Materials and Supplies
  - Printing and Communications
  - Utilities
  - Rent
- Other General Project Costs

TOTAL

That is, funding is not provided on a block or a per client basis, but rather in a detailed format that enables HRDC to identify each expenditure on a line-by-line basis.

11. The manner in which HRDC dealt with the disbursement of funds to the School Board was described by Ms. Allen. HRDC reimbursed the School Board for monies spent on the program. The School Board was required to account to HRDC for each invoice paid or each wage cheque issued and to allocate it to the specific budget projection contained in each line. Even the amount of money allocated to a line was not simply a lump sum. The Agreement contains a projected schedule of how the money will be spent and when. Ms. Allen testified that the School Board was required to demonstrate that any expenditure submitted against a particular line item in the budget was both a proper expenditure of funds for the purpose and was either on track for the budget period or no more than fifteen percent off projections in either direction. Ms. Allen's understanding of the purpose of this minute scrutiny of the expenditure was to ensure the federal government of a proper expenditure of funds and to ensure that the School Board did not "blow the budget" in the first months of its operation. She said it was not possible for the School Board to generate a profit of any sort from this Agreement. Monies were reimbursed rather than advanced, and if the School Board did not spend money for a particular approved item or line, it did not receive any money from HRDC.

12. The School Board conducted this program, along with some of its Adult and Continuing Education program, at the two locations listed above. Both leases for the two premises were ordinary commercial leases from private commercial landlords in no way connected to any level of government. The leases contained the normal standard commercial terms of any commercial lease in the area. Specifically, both leases provided that at the end of the term all fixtures and tenant's improvements remained on the premises and as property of the landlord.

13. In order to make the premises usable for the program, the School Board had certain construction work performed on both premises. This work was described in an agreed-upon statement of facts, that may be summarized as follows:

- installation of electrical wiring, receptacles and other fixtures
- installation of electrical wiring and data cabling between floors of the premises
- installation of data communications lines, computer jacks and other connecting hardware, installation of a security system, removal of certain partition walls
- erection of partition walls, the painting of same
- installation of interior doors in partition walls.

14. The parties agreed that all of this work was work that the Board would find to be construction work, such that the construction provisions of the *Labour Relations Act* would, if relevant, be applicable to it. The total cost of these installations was $17,160.50. That cost is allocated to the "Capital Costs" line of the budget set in the Agreements with HRDC.

Issues

15. The School Board argues that these facts do not take it outside of the definition of a non-construction employer for three reasons:

(1) The School Board does not operate a business in the construction industry;

(2) The money received from HRDC is not "compensation" for construction work;

(3) HRDC is not an "unrelated" person to the School Board.

16. The first and third of these issues are easily disposed of; the second is the real focus of this argument.

Does the School Board operate a business in the Construction Industry?

17. The School Board was certified in the late 1990s by each of these Unions under the construction provisions of the Act. It was found to be an employer operating a business in the construction industry at that time. Counsel for the School Board presented a number of arguments as to why I ought not to find it to be an employer in the construction industry. These

arguments related primarily to the fact that the School Board is a statutory creation which carries on certain legally-mandated programs and is not a "business" in any ordinary or corporate sense. Given the ultimate result of this decision, I do not need to deal with this argument at length. It is sufficient to quote the Board's decision in *Hudson's Bay Company*, [2002] OLRB Rep. May/June 398 at paragraph 45:

> 45. In the Board's view what has not changed is as significant to the analysis as what has changed. The retention of the same definition of "construction industry" and "employer" confirms the conclusion in the Board's early decisions with respect to the first "non-construction employer" definition. The Board's longstanding jurisprudence had established that in interpreting the phrase "person who operates a business in the construction industry" no distinction is to be made between vendors of construction services and those who effect construction for their own benefit by engaging contractors. That case law was consolidated in *The Municipality of Metropolitan Toronto*, [1989] OLRB Rep. Mar. 279; the *City of Toronto* decision (above) offers a pithy explanation of the rationale at paragraph 15:
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> > The Board has on many occasions considered situations where employers whose principal or common business is not in the construction industry have been affected by an application for certification under the construction provisions of the Act but who have clearly entered the field and performed work which would commonly be regarded as construction work. In the *Tops Marina Hotel* case, *supra*, the Board held that it was not necessary for the construction activity to be the only business activity or the primary activity of an employer in order for such an employer to operate a business in the construction industry. Similarly in the *Kapuskasing Board of Education* case, *supra*, the Board held that while the principal business of an employer may not be in the construction industry, such an employer may also operate a business in the construction industry, whether on a temporary basis or for some period of time, even though the employer does not anticipate it will regularly carry on a business in the construction industry in the future or even carry on one more operation in the construction industry. In these circumstances the Board has held that this was not a reason not to hold that such an employer is carrying on a business in the construction industry. The Board also noted in that case that there is no requirement that in order to operate a business an operator of such business must necessarily carry on such venture with a view to making a profit. In our view, the respondent [City of Toronto] is an employer within the meaning of section 106(c) [now section 126(1)] of the *Labour Relations Act* because it performs from time to time work which falls within the definition of construction industry in section 1(1)(f).

This reasoning applies equally to the School Board.

Is HRDC is an Unrelated Person?

18. Counsel for the School Board argued that this Board ought not to find the School Board to be unrelated to the Ministry of Education or to any branch of the federal government. He argued that the nature of both entities had to be looked at "in the course of understanding of what we do for Essex County residents". The School Board is funded exclusively by senior levels of government to undertake certain education-related activities. He argued that there is a parallel between funding that the School Board gets from the Ministry of Education and the funding obtained in this case from HRDC. Since the programs are consistent with the legislative tasks given to both the School Board and HRDC, they should not be seen as unrelated parties.

19. I do not accept that argument. It appears to me to be predicated on the assumption that there is a commonality of purpose or being among provincial and federal governments. That concept is entirely absent from the history of Canadian law. The distinction between the constitutional competence of the federal and provincial governments may be a difficult line to draw in any one case, but there is no doubt that there is a line somewhere. While the Act does apply to certain Crown agencies (subsection 4(1)) the Act does not apply to Her Majesty in Right of Ontario or to Her Majesty in Right of Canada (subsection 4(2)). It is difficult to imagine how the Board could find a legal relationship between an employer to whom the Act does not apply and one to whom the Act does apply. In any event, the legal personalities of Her Majesty in Right of Canada and the School Board created by provincial legislation are quite distinct. For the purposes of this decision, I find that HRDC is an unrelated party.

Has the School Board engaged in work in the Construction Industry for which it expects compensation from an unrelated person?

20. This is the central issue of this part of the case. The Board has had the experience of a number of applications for a declaration that an employer is a non-construction employer. Most of the closely litigated cases deal with an employer that is engaged in commercial activities, including construction, and those construction activities are in some way related to their dealings with third parties with whom the applicant has a commercial relationship. Construction activity does not in and of itself mean that the applicant is not a non-construction employer. As the Board said in *Hudson's Bay Company*, [2002] OLRB Rep. May/June 398:

> 49. First, as both parties agree, an employer can operate a business in the construction industry to an unlimited degree if it is doing work for itself, or for its own benefit, whether by directly hiring employees or engaging subcontractors, and meet the definition of "non-construction employer". But in contrast, as counsel for the employer accepted, if the employer is doing any construction work for an unrelated person from whom it expects compensation, that employer remains an "employer" whose labour relations will continue to be governed by the construction industry provisions of the *Labour Relations Act*.

21. It is only when the commercial activity entails payment or the expectation of compensation by a third party that the employer may retain the status of an employer in the construction industry. As the Board said in *Shell Canada Products, a general Partnership of Shell Canada Limited and Shell Canada O.P. Inc. (formerly Shell Canada Limited)*, [2002] OLRB Rep. July/Aug. 729 (the "Shell case"), the definition envisions a specific exchange:

> 43. . . . . The definition of "non-construction employer" requires that an applicant demonstrate that it does "no work in the construction industry *for which* the employer expects compensation from an unrelated person". The italicized words must mean, in a grammatical sense, that it is the construction work *for which* the third party is paying. That is, the Third Party directly or indirectly causes the applicant to engage in construction activities, and has undertaken to pay the applicant for doing so. ...

22. In the *Windsor-Essex Catholic District School Board*, [2002] OLRB Rep. Sept./Oct. 971 (October 17, 2002), the Board articulated this concept in a slightly different manner:

> 13. I concur with the conclusion of the Board in *Hudsons' Bay Company* that the definition of "non-construction employer" is clear and requires no outside aids to interpretation. An employer who performs no work in the construction industry for the benefit of an entity other than itself is, according to the definition, a non-construction employer. I further concur with the Board's conclusions in *Shell Canada Products* to the effect that, in order for an employer to be taken outside of the definition of non-construction employer, it must undertake construction activity at the behest of, and for the benefit of, an unrelated person and expect to be compensated for such activity.
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> ...
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> 16. ... In order for "compensation" to exist, there must be the presence of an exchange. In the context of the definition of non-construction employer, the person paying the compensation is doing so for having been provided with construction services. Accordingly, to fall outside of the definition, it is not sufficient for an employer to engage in construction activity and receive funds from an unrelated person, rather, an employer must engage in construction activities and be paid by an unrelated person *for having done so*.
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> 17. It is my view that, when read as a whole, the language of the definition of non-construction employer does not exclude employers who undertake construction activity for their own benefit using funds that they may not have generated themselves in circumstances where the giver of the funds does not benefit from the construction work. In such instances, the employers do work in the construction industry and expect funding but the funding they receive is not payment for having performed the work and is thus not compensation. (emphasis added)

23. The difficulty in drawing this apparently simple line arises in cases where the applicant is engaged in construction activities and that construction is related in some way to the commercial relations with third parties. In assessing whether the necessary exchange has taken place by which the third party is obligated to compensate the applicant *for* the construction work, the Board has examined the fundamental nature of the transaction rather than the surface appearance of the contractual documents. To perhaps oversimplify the analysis in the cases examined, the Board has determined in these cases whether the particular construction work is part of the applicant's business or part of the third party's business. The Board has examined whether the construction activity is work necessary for the applicant to carry on its business (including the business of attracting clients or customers) or whether the applicant is doing it so that the third party can carry on its business, generally in conjunction with the applicant.

24. These cases all involved commercial businesses. The two cases involving school boards (both of them in Windsor, referred to below) did not, for different reasons, need to deal with this question at all. There is, however, no distinction drawn in the Act between a private enterprise and a public body. Hence, in my view, the analysis the Board undertakes must be the same regardless of the nature of the applicant's activities or business. The only difference is that the evidence in the public sector will look different from the evidence one sees in the private sector.

25. Counsel for the Unions identified as compensation the Capital Costs line in each of the Agreements with HRDC, and even further, the specific invoice by invoice requests for reimbursement and payments by HRDC made for the $17,160 worth of construction work. Counsel relies on the fact that the budget for this specific work is approved in advance and paid for specifically as the cost is incurred. What is necessary in this case is to determine whether or the money received from HRDC that covered the cost of the construction work was for the benefit of HRDC or the benefit of the School Board. It is the essential nature of the transaction that is of significance, not the particular form of contract or words used.

26. In the *Shell* case, Shell entered into certain contracts with others, primarily dealers in various retail settings, which caused them to pay money to Shell and caused Shell to perform certain construction work. None of that work took Shell outside of the non-construction employer definitions, since the Board concluded that there was no specific nexus between the payment of money and the work done. However, the construction of certain storage tanks did so. The contract between Shell and parties called "Trading Partners" was an agreement for the construction of a storage facility. The specific cost of the storage facility was charged to and paid for by the third party:

> 49. ... More importantly, Shell is doing work "for itself" when it builds a gas-bar or an Aviation Centre. It is providing the physical space to carry on its business, albeit through the agency of a third party. When Shell contracts for the capital additions to Terminals 9 and 10, it is building a facility to meet the needs of the Trading Partner, and indeed is doing so at the request of the Trading Partner. It receives compensation from the Trading Partner for doing so which is directly related to the construction cost incurred in doing the work. The Trading Partner pays a percentage of the construction costs which equals the percentage of the useable life of the facility that it is entitled to use.

27. Similarly, in *Hudsons Bay Company, supra*, the Board examined contracts between the HBC store and certain licensees. Essentially, the licensees were granted a license to "set up shop" in HBC stores and the store in turn received a portion of the sales revenue from the licensee. As part of this transaction, HBC did perform construction work, which was for the benefit of the licensees (retailers and manufacturers) to enable them to display their wares. When HBC built the basic demising walls and electrical and plumbing outlets, it was doing so as part of its own business, although the purpose of that business was to attract a licensee. However, when HBC went on to perform the finishing and fixturing work in a licensee's area, it charged back the cost of that work to the licensee. That was the performance of construction work for an unrelated party, for which HBC expected to be compensated. The Board explained the distinction as follows:

> 51. We are satisfied that when HBC engages contractors who perform work in the space that licensees occupy, HBC is performing construction work not for its own benefit, but for the benefit of unrelated persons. We accept that where HBC supplies nothing more than demising walls, and electrical and plumbing outlets to licensees, HBC is performing that work for its own benefit; it is the minimum it must do to attract a licensee. But when HBC provides finishing work in premises occupied by licensees, which can include fixturing, partitioning and decorating, HBC is performing construction work for the licensee. Similarly, we conclude that when HBC arranges the supply and installation of fixtures on behalf of, for example, a cosmetic manufacturer, HBC is performing construction work for an unrelated person.
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> ...
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> 55. To be clear, we are focused on situations where HBC expects to be paid by unrelated persons for the construction work it effects. We heard evidence of situations in which HBC charges back the licensee for work, and other situations where it does not because it wants to attract the licensee, or the construction work was occasioned by HBC's decision to move the licensee's location. We reject the union's submission that even where a licensee does not pay for construction work performed, it must be assumed to be part of the licensing arrangement. HBC led evidence that the cost of construction undertaken for the benefit of the licensee is not included in calculating the licensing fee. That evidence was uncontradicted.
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> ...
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> 58. We conclude that HBC does not meet the definition of "non-construction employer". It operates a business in the construction industry by effecting construction. The work that the HBC performs to build for itself would permit it to be found to be a "non-construction employer". However, HBC's regular facilitation of construction work for licensees and manufacturers where it expects reimbursement for its expenditures in securing that work, means that HBC expects compensation from unrelated persons. Thus, the HBC cannot meet the definition of "non-construction employer".

28. One further case relied on by the Unions is a decision of the Board in *The Great Atlantic and Pacific Company of Canada*, [2002] OLRB Rep. May/June 387 (May 15, 2002). This case is of limited use, since the definition of non-construction employer was different at the time. However, it is useful in terms of how the Board defined construction services that were being provided to an unrelated party. The unrelated party in this case was the franchisors of A & P, who operated Food Basics stores. In that case, the Board said:

> 47. ... A&P has positioned itself as a franchiser, creating a "turn key" operation under the Food Basics banner. As part of that program, called the Food Basics System, A&P provides financing for equipment, furnishes leased premises, and effects construction, first to attract franchisees, and then as an ongoing service to them. When A&P builds stores for itself, it is doing so to create an environment in which to merchandise its product, food. The

> store is necessary to showcase the food, but the store is not the product A&P is selling.
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> 48. In contrast, when A&P plays the role of franchiser, its product is a Food Basics store, with the support and expertise A&P can offer, as part of the Food Basics System. *In the franchise part of A&P's business, the store is part of the product, part of the package,* with the financing, food distribution network, and industry savvy that a significant player in the supermarket industry can bring to a franchisee.
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> 49. I appreciate that A&P became a franchiser through adverse circumstances and that it is still operating in the food industry. But what A&P is offering franchisees is much more than food. Construction of stores and ongoing ability to refurbish and upgrade those stores, which invariably have a construction component to them, is a significant element of the franchise A&P is marketing. Consequently, I conclude that A&P's engagement in construction is not incidental to its primary business. (emphasis added)

29. Essentially, the Board drew a distinction in each of these cases between construction work which is part of the employer's business, and which it must do to attract business from other commercial enterprises or retail customers, and those agreements where the alleged non-construction employer is, in fact, entering into a contract, one element of which is the providing of construction services. Applying this analysis to the facts of this case requires a consideration of the context. Shell, HBC and A & P are profit-making enterprises engaged ultimately in a retail trade. The School Board is neither. However, when the Board performs its core function of providing education under the *Education Act*, it is acting under a statutory obligation. When the School Board undertakes the HRDC contract, it is engaged in activity that it is not under a statutory obligation to perform. This is not the only non-obligatory function it performs, but sits beside alternative high schools and Adult and Continuing Education programs. The School Board sees all of these as complementing and supporting its obligatory function of providing education. That is a decision that it is free to make, but could equally decide not to undertake. To that extent, it is operating more like a business.

30. Section 126, of course, makes no distinction between a commercial and a non-profit employer. Both are treated in the same manner. What is important here is that the context of the evidence in this case is simply different from that of a retail operation. For example, budgets are a matter of covering costs and spending all of the money allocated to a program within the fiscal period provided for. There is no consideration of profits or shareholder dividends in the financial accounts of the School Board.

31. For HRDC, the purpose was to ensure that services that it was, presumably, statutorily mandated to provide, were offered in the Windsor-Essex area. For whatever reasons, HRDC insisted on a minute inspection of monies being expended and a strict accounting for each penny of the work. In particular, it controlled the expenditures and the pace of expenditures by the School Board. Why it chose this method of operation is not relevant. That was simply the method chosen by HRDC to ensure that it had control over the monies it was spending to ensure that the services were delivered in a manner that was contemplated in the Agreement with the School Board.

32. The Agreement with HRDC is not an Agreement that, of necessity, contemplates construction activity. It is an Agreement by which the School Board agrees to deliver a program in the terms specified by HRDC. To reduce the Agreement to its most basic terms, it is a contract whereby HRDC agrees to pay money for the delivery of certain services. What HRDC bargains for is set out in great detail in Schedule "A" to the Agreement. The Agreement sets out in general terms what the objective of the program is, and then describes in great detail the proposed activities and timelines of the project and the numbers of clients to be served at each location. There is no reference at all to any construction activity, although the budget provided by the School Board includes a line item for "Capital Costs" that include (among other things) the construction work. However, the expenditure of money for Capital Costs is not undertaken because HRDC wishes the School Board to purchase computers or software or construction work. These are simply part of the costs that the School Board will incur as part of providing the services for which HRDC bargained.

33. The Agreement is structured in a detailed manner because of the requirements of HRDC. The Schedule in this form is its manner of doing business. The Agreement provides (in terms of the number of dollars allocated to Capital Costs and some other schedule not filed in evidence) for reimbursement for construction activity, because the School Board did not have facilities that were exactly right for the purposes of the program. However, HRDC was not contracting for the performance of the construction work. Presumably, it would have been just as happy if no such work had been necessary, and hence would not have been paid for. It is a cost incurred by the School Board in the performance of its program delivery for HRDC, for which HRDC was prepared to reimburse it. Unlike the storage facilities built by Shell, the fixturing work for customers of HBC, or the Food Basics stores built by A & P, the construction work performed by the School Board was not essential to fulfill its Agreement with HRDC. This construction was simply one of the incidental costs incurred by the School Board in its delivery of the services that were sought by HRDC.

34. Because neither HRDC nor the School Board is a profit-making business, it is more difficult to apply the analysis of those three cases in deciding whose "business" the construction work was in aid of. It cannot be described as a risk in the hands of either party in pursuit of the profits which it seeks. Nonetheless, I conclude that the construction work was work that was performed by the School Board in order to be able to deliver its end of the bargain. HRDC was prepared to fund the program on a "cost recovery" basis. The construction work was simply one of the School Board's costs, not directly related to what HRDC wanted to obtain. In this respect, two pieces of evidence were illustrative. Ms. Allen was asked questions about the approval of construction work. In cross-examination and re-examination, she stated that HRDC approved payments for the construction work. However, the design of the construction work, its execution, and the approval of the construction work, as completed construction work, was performed by the School Board. Similarly, Ms. DiDomenico was cross-examined as to whether or not the contract amounted to a "turnkey" operation (to borrow a word from the *A & P* case). While she was uncertain as to precisely what was meant by the term, when asked on re-examination who ensures that the operation is a turnkey operation, she replied: "I do".

35. I conclude that the construction activities were undertaken by the School Board as part of the work it saw as necessary to perform the services it contracted with HRDC to perform. HRDC paid for them, in the sense that it paid for all costs in the program, but did not bargain for these or any other construction activities. There is no specific exchange in which one can say that

the work was construction work *for which* the third party paid, except in the most literal accounting sense. The fact that the payment can be isolated at all is a function of the accounting device used by HRDC to keep track of the costs of the project. What is lacking is the slightest interest on the part of the compensating party (HRDC) to pay for this or any other construction work. The money thus received for the reimbursement for these contracts is not compensation for work in the construction industry for which the employer expects to be compensated by an unrelated person.

36. This analysis does leave one issue raised by the Unions that I must deal with. In an application brought in respect of the Carpenters' bargaining rights, another panel of this Board heard evidence that may have been similar to the evidence in this case. In *Greater Essex County District School Board*, [2003] OLRB Rep. Jan/Feb 74 (January 22, 2003), the Board listed a number of types of construction activity, including the construction of an entire police station, work refinishing a floor in a community centre and construction necessary to provide premises for participants in a "retraining program" operated under an arrangement with HRDC. With respect to that work, the Board said:

> 13. Accordingly, the evidence establishes that the School Board performed construction industry work for which it expected compensation from an unrelated person in 1998 and 1999. It has not done so, however, since December 1999, a point in time prior to the introduction of the present definition of non-construction employer. The issue thus arises as to what period of time is relevant for the purposes of determining the School Board's present status.

If the evidence was indeed similar to the evidence in this case, the conclusion that the other panel of the Board came to in that case appears to be different from the conclusion I have reached in this case. Certain factors do limit this apparent conflict. The evidence is not described in detail, and there is no analysis of it. There are also significant examples of other types of construction, such as the construction of an entire police station, which were unarguably work that constituted construction work for which the School Board received compensation form an unrelated party. That other evidence meant that, regardless of the finding about the HRDC monies, the application would fail unless all of the activity took place outside the relevant time period. Thus the basis of the Board's decision is not a finding that this is construction work for which the School Board expected compensation, but a finding that the School Board did no such work during the relevant period of time. For these reasons, and with the greatest of deference to that panel of the Board, if this is the same type of evidence that that panel of the Board heard, I respectfully come to a different conclusion on this point.

37. I conclude then that the payments received from HRDC do not constitute compensation from an unrelated person for work in the construction industry. This evidence does not cause me to determine that the applicant falls outside of the definition of a non-construction employer and therefore does not cause this application to be dismissed.

38. These applications are directed to the Registrar to schedule dates to hear the rest of the evidence in these applications.

4264-05-R; 0069-06-U The International Union of Painters and Allied Trades, Local Union 557, Applicant v. **L & L Painting and Decorating Ltd.**, Responding Party

Certification – Construction Industry – Remedies – Unfair Labour Practice – In this request for remedial certification the Board found: First, that the second-in-command asking employees if they had signed cards was intimidatory – Second, that the owner's statements without consequences, actual or intended, do not become unlawful statements simply because an employee overhears them in circumstances where it was not reasonable to expect that employee to overhear them – However, the owner's attempt to conduct surveillance on a meeting being held after hours (and off employer or customer property) for the purposes of discovering who might be interested in the union was improper and was a violation of s. 70 – Third, that a lay-off due to a temporary downturn in work was not tainted by any anti-union animus – This conclusion was supported by the fact that the employee did not actively demonstrate support for the union, and he was not involved in trying to recruit others; further, the employer offered him his job back two weeks later – Fourth, that the lay-off of the union's key inside organizer was in fact a discharge in violation of s. 72 – The Board held that while the employer did contravene the Act, these violations and the termination of the inside organizer, were not so serious that the Board could conclude that section 11 was the only appropriate remedy – Therefore, the Board ordered compensation to the inside organizer and a posting – ULP Application allowed, in part; Certification dismissed

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *Elizabeth Mitchell, Juan Lopez* and *Franco Santeramo* for the applicant; *Chris Fiore, Walter Thornton* and *Leon Raskin* for the responding party.

DECISION OF THE BOARD; October 15, 2007

1. This is an application for certification brought pursuant to the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). Although the Union originally applied under section 128.1 of the Act, it also filed an application under section 96 requesting relief under section 11, specifically that the Board issue a certificate to it regardless of the number of employees in the bargaining unit on whose behalf it had filed membership evidence. At the beginning of the case, the Union indicated that in light of *Southside Construction (London) Ltd.*, [2005] OLRB Rep. Sept./Oct. 854 (October 17, 2005), the Union might wish to seek to convert the application into one under section 8. I dealt with that argument and the Employer's objection to it in a decision dated June 27, 2006.

2. At the end of the evidence in this case, the Union sought to convert the application into one brought under section 8 of the Act, the Employer objected that it was too late in this case for the Union to seek to amend the application in that manner. I do not need to deal with this issue. I conclude that it would not be appropriate to certify the Union pursuant to section 11 in any event, and therefore there is no need to deal with the arguments.

General Comments

3. During argument, counsel for the Employer made much of the fact that this case was pursued by the Union in a very disjointed way. Pleadings were filed and amended and re-amended. This occurred in fact at one point during the evidence of Leon Raskin, principal of L & L, and indeed after he had testified about the incident about which the Union sought to amend its pleadings. At the end, counsel for the Employer urged that this manner of proceeding ought to weigh against the credibility of certain of the Union's witnesses. In effect, the Employer asks me to draw the conclusion that counsel was in receipt of numerous inconsistent statements.

4. I do not accept that argument. I do not believe that the Union's frequent changes of position came about as a result of a change in the story of any of the persons who were called to testify. Rather, I conclude this came from the fact that the Union reached the conclusion, even before it filed the application for certification, that the Employer was engaged in a campaign to thwart its organizing efforts at all costs. This conclusion began with some improper behaviour on the part of the chief foreman of the company, Przenyslaw Organisciak (whom everyone, including counsel, referred to as "Mick"). This view, unfortunately, coloured the Union's view of everything that took place after that, leading to miscommunication and misperception about what was happening during the organizing campaign.

5. In terms of the hearing, this meant that much time was spent pursuing factual issues that simply did not materialize or were abandoned by the time counsel reached argument. Such occurrences are certainly not unheard of in many hearings, although this hearing was particularly outstanding in that regard. More importantly, the lack of any coherent understanding of what had happened, and any coherent pattern of behaviour, meant that in the end, there is nothing that would cause the Board to conclude that the Union was unable to demonstrate that forty percent or more of the individuals in the bargaining unit were or would likely become members.

The Issues

6. In argument, the Union relied on four rather disparate issues, all of which it said were violations of the Act, and all of which it said ought to entitle it to relief under section 11. These four issues were:

(1) Statements by Mr. Organisciak about union organizing;

(2) An alleged threat to job security at the BMW dealership project made by Leon Raskin, and certain other activity by Mr. Raskin designed to identify union supporters;

(3) The alleged discharge of Alex Borodinos;

(4) The alleged discharge of Jorge Martinez.

7. I find that only some of these allegations in fact occurred as the Union alleged they occurred and constituted violations of the Act on the part of the Employer. Those violations are not sufficient to cause the Board to do more than make the orders and declarations at the end of the case, but these orders do not include outright certification pursuant to section 11.

Organization of the Company

8. L & L Painting is a fair-sized painting company active in the Toronto area. The owner is Leon Raskin, who oversees all of the productive work of the company. He is also the owner of L & L Painting. There are office staff, including an estimator, who do not interact with the employees in the bargaining unit.

9. Mr. Organisciak is Mr. Raskin's second in command, generally exercising supervisory authority, reporting to Mr. Raskin. Mr. Organisciak and Mr. Raskin divide up the jobs, which they are responsible generally for supervising, supplying materials, and ensuring completion. Both Mr. Organisciak and Mr. Raskin testified that only Mr. Raskin has the ability to hire, fire and lay off individuals, although he is clearly guided greatly by Mr. Organisciak in making those decisions.

10. A third employee, Victor Dokaj, a working foreman who may or may not exercise managerial authority, has fewer responsibilities than Mr. Organisciak, but may also be required to be responsible for more than one job at a time.

Conduct of Przenyslaw Organisciak

11. Two employees of L & L, Roman Pobyshev and Miguel Maraveles, testified that Mr. Organisciak had asked them about whether or not they had signed a card. One employee, Peter Vjkaj, said that Victor had also asked him if he had signed a card. The statements attributed to Mr. Organisciak were more serious. The employees testified in each case that he had either demanded to know if they had signed a "green card" (the Union's membership applications were printed on green paper) or had accused them of doing so. He said in each case that he knew the answer because he had a list of everyone who had signed. He further told Miguel Maraveles directly not to sign a card.

12. Mr. Organisciak and Victor Dokaj both denied that they had spoken to any employee about union membership. Victor Dokaj went so far as to say that "It is not my business to talk about the union [to employees] or to share my opinions or to talk about anything". Mr. Organisciak's denials were made in less dramatic terms, but essentially he said that this was not a matter of his concern.

13. Demeanour is a notoriously unreliable basis for resolving this kind of conflict. The fact that neither Mr. Dokaj nor Mr. Organisciak were particularly forthcoming or forthright in their answers may create an unfavourable impression, but I cannot say that this was not due entirely to unfamiliarity of English and discomfort with any form of legal process. However, I find that their answers to questions asked of them in cross-examination were unresponsive or were entirely evasive. They often repeated a question they had been asked, slowly, or asked that a question be repeated, before answering, leading me to conclude that they were weighing the consequences of an answer rather than simply trying to give a straightforward and accurate answer.

14. More importantly, the Employer's evidence is both unconvincing and inconsistent. Leon Raskin also denied any interest in who became a member of the Union. He said that he did know of some of those who had signed cards, but that in those cases, his source of information

was Mr. Dokaj, rather than from any employee directly. I also find, as set out below, that Mr. Raskin attended a meeting between union organizers and employees of L & L at a coffee shop near Jane and Finch (or perhaps Jane and Wilson) in an attempt to see who was showing an interest in the meeting. He did not say or do anything to interfere with that meeting, but was clearly interested in who was there. The information was important to him. However, this activity is entirely inconsistent with Mr. Raskin's stated indifference as to whether or not his employees signed union cards or his assertion that he just happened to receive the information about employees joining the union from Mr. Dokaj. Further, as again detailed more fully below, in a conversation with Ray Preston, one of the union organizers, he agreed that he made a statement to the effect that employees who joined the Union could not or would not be working for L & L (a statement that, in the circumstances, was not intimidation or coercion). Clearly, union membership was not, to L & L, a matter of complete indifference. In addition, the inconsistency between Mr. Dokaj's evidence and Mr. Raskin's evidence leads me to the conclusion that they were not being truthful.

15. In the end, the Union's evidence was straightforward and consistent. In addition to the two individuals noted above, Alex Borodinos testified that he was asked by Ignatz Konsag about who had signed union membership and even assured him that he (Mr. Konsag) had a copy of the list. Mr. Borodinos was so concerned that he raised this with Ray Porter, a union organizer, who was required to take some time to reassure Mr. Borodinos that there was no such list and that L & L would never receive the Union's cards. If I were not to accept the Union's evidence, I would have to conclude that all of the employees and the organizer had conspired to invent a story and that they had all agreed to come to the Board and lie under oath about it. There is nothing in the evidence or the manner in which they gave that evidence that would lead me to that conclusion.

16. Therefore, I find that Mr. Organisciak did in fact make the statements attributed to him. The statements are clearly intimidatory. They were clearly designed to extract information that L & L was not entitled to have, and to dissuade employees from becoming members for fear of incurring the wrath of their employer. Such statements are unlawful and contrary to sections 70, 72 and 76.

Alleged Job Threats

17. During the organizing campaign, one of the sites on which L & L was working was a BMW dealership. Ray Preston and Frank Santeramo, organizers for the Union, went to the site seeking to solicit membership in the Union from employees working there. While they were there, Leon Raskin arrived. Ray Preston and Leon Raskin knew each other slightly. Mr. Raskin had once been a member of the Painters Union. Mr. Raskin asked Mr. Preston what he was doing at the site, and Mr. Preston responded truthfully that he was seeking to organize the employees on the site. Mr. Raskin did not order him off the site, but engaged in a conversation with him. The two walked about inside the dealership building and then stopped just outside the main door. The day was late winter, and the interior of the dealership building was being heated by noisy propane Salamander heaters.

18. According to both Mr. Preston and Mr. Raskin, it was a private conversation between the two. Neither was attempting to use the conversation to grandstand in front of employees or to communicate anything to them. Mr. Preston pressed Mr. Raskin to sign a voluntary collective

agreement and to "return to the union fold". Mr. Raskin declined. The two were putting forward their positions forcefully to one another. Mr. Preston said it would be more advantageous to L & L if it were to sign a voluntary agreement rather than being certified. Mr. Raskin refused, saying he could not run his business if it were bound by a collective agreement. During the course of that conversation, Ray Porter stated that employees could sign membership cards without the company's permission. Mr. Raskin said, essentially, that employees are free to join the union if they wished to do so (or, on his version, that he had no trouble with them joining the union), but if an employee did so, he could not be working for L & L. This is entirely consistent as between the evidence of the two witnesses. In context, it is nothing more than two individuals stating, forcefully, their particular positions on the execution of a voluntary collective agreement. The statement about employees not being able to work for L & L was an aggressive response to Mr. Preston's assertions that could not and did not intimidate Mr. Preston. It displayed an anti-union animus, but did not translate that animus into any concrete action

19. At the time, neither of them thought that any employee was listening to the conversation. One painter, Alex Borodinos, later said that he had heard it. Indeed, even Mr. Preston was unaware that Mr. Borodinos had heard it until he and Mr. Borodinos were preparing the case with counsel. Mr. Preston thought that Mr. Borodinos was close enough to hear their exchange; Mr. Raskin did not think he was. Both agreed the Salamander heaters were producing some level of noise. Mr. Borodinos' evidence was that he heard Mr. Raskin say "If the guys sign cards, I'll fire them". He also said that Mr. Raskin later on came and asked him if he had signed a card. Clearly, Mr. Borodinos did not hear these words. I accept the evidence of the two men who were parties to the conversation over someone who overheard it in less than ideal circumstances. As noted, I conclude that Mr. Raskin did in fact ask Mr. Borodinos if he had signed a card. However, while Mr. Borodinos may have drawn a link between the question that he had been asked by Mr. Konsag and the threat that he thought he heard and that question, there is no reason why Mr. Raskin would have expected him to do so. The statement to Mr. Preston, even if it was overheard by Mr. Borodinos, is not a violation of the Act. Statements that have no consequences, actual or intended, and are made in the course of a private conversation, do not become unlawful statements simply because an employee overhears them in circumstances where it was not reasonable to expect that employee to overhear them.

20. The Union made much in its pleadings of a second incident, about a number of statements that Mr. Raskin asked employees to sign. Most of these were perfectly innocent. Most of them were a type of questionnaire that the company circulated among all employees who were working on the application date to fill in indicating what they were doing and where they were doing it. They were simply handed out, with no instructions and employees were asked to respond to them. Given that there were status disputes in the pleadings of the application for certification and that the information was sought independently of any other request or statement to an employee, there is nothing wrong with the circulation of such questionnaires. In two other instances, Mr. Raskin asked employees to sign a statement saying that they had quit rather than been fired. The statements were true; the employees had quit. Mr. Raskin sought the statements after the Union filed the section 96 complaint alleging that certain employees had been discharged contrary to the Act. Mr. Raskin was obviously concerned about accusations being made. While his approach was not particularly sophisticated, and likely would have been of little use if there had really been an issue about the cessation of employment of either employee, they are of no significance whatsoever in this case.

21. On two occasions in March, the Union attempted to meet employees in a coffee shop near the York University project (Jane and Finch or perhaps Jane and Wilson). Jorge Martinez, an employee of L & L, invited other employees to attend. On the first occasion, Jorge Martinez said that he saw Mr. Raskin's truck in the parking lot. Mr. Raskin agreed that it was possible that he had been there, although he denied having tried to watch the meeting. Few employees came to the meeting, although some may have driven into the driveway and disappeared as soon as they saw Mr. Raskin's truck. More employees attended at the second meeting.

22. The Union alleged that Mr. Raskin's attendance at the parking lot in front of the coffee shop was intimidation. Mr. Raskin claimed that if he was there at all, it was perhaps only to stop and pick something else up at a nearby store. Again, I find that Mr. Raskin was very interested in who joined the union, and that he would have tried to find out who was going to join the union at that time. His approach was, once again, amateurish. His presence was not intended to be intimidating, since he made no effort to be seen or to say anything to anyone, but it likely had that effect. To attempt to conduct surveillance on a meeting being held after hours and off employer or customer property for the purposes of discovering who might be interested in the union is improper and is a violation of section 70.

Alex Borodinos

23. Alex Borodinos was laid off on March 25, 2006, two business days before the application for certification was filed. Mr. Raskin told him that he was laid off due to lack of work. It is not disputed that Mr. Raskin said these words and that Mr. Borodinos was laid off. Mr. Borodinos doubted the reasons for his layoff because he was working on a job at the Sheraton Centre in Toronto and there seemed to be lots of work left to do there. In fact, his time card, which is not disputed, shows that he worked at the BMW dealership from March 20-25, with only one day at the Sheraton Centre, March 23. Mr. Raskin testified that he was simply reducing forces as the York University job, by far the company's largest, was winding down. The Union alleges that Mr. Borodinos was laid off because he was a union supporter. In that respect, the Union relies on the fact that Mr. Raskin saw him at the coffee shop meeting in March and that Mr. Raskin later asked him if he had signed a union card. Mr. Raskin agreed that he had asked that question of Mr. Borodinos, but only, he claimed, because he "wanted to know what the union offered".

24. Both witnesses agree that Mr. Raskin called Mr. Borodinos two weeks after his lay-of and offered to recall him to work. Alex Borodinos said he had a job and declined the offer. Two other employees were laid off at around that time (March 31 and March 2) and one, Olekscy Latansky, was hired on March 15. No questions were directed to Mr. Raskin about why Olekscy Latansky was hired. He had worked for L & L Painting before. In addition, the job at York University, which had been a very large job at one point, came to a conclusion in March and resulted in a number of employees being freed up. Other persons were hired after April 1, 2006 when, according to the unchallenged evidence of Mr. Raskin, he had more work.

25. I conclude that there was a temporary downturn in work in March of 2006 that led to the lay-off of three employees, along with two others (not including Mr. Martinez discussed below) who quit. The re-hiring of employees later is consistent with the increase in work to which Mr. Raskin testified.

26. The only question is whether Mr. Borodinos was selected for lay-off as a reprisal for joining the union. Of the three persons laid off, two were perceived to be union supporters, although it is not clear from the evidence whether the third employee was so perceived before the application for certification was filed. The fact that Mr. Raskin asked Mr. Borodinos whether he had signed a card does suggest that Mr. Raskin believed that he had done so. Although Mr. Borodinos denied that he had signed a union card, Mr. Raskin was likely still suspicious. It is, after all, likely that an employee will not answer that question truthfully if they fear a reprisal from their employer.

27. That in itself does not persuade me that Mr. Borodinos was selected for lay-off because of his perceived union support. He did not actively demonstrate support for the Union, nor was he involved in trying to recruit others. He was offered his job back two weeks later. Although that would mean that he was not on the list of employees for the purposes of the count on the date of application, Leon Raskin had no idea at the time of lay-off if or when the application would be filed. If he in fact believed that Mr. Borodinos was a union supporter, he would be unlikely to offer him employment on L & L job sites after the application was filed where he would be in a position to report to the Union what was going on and stay in touch with employees who might be useful as witnesses.

28. On balance, I conclude that his lay-off was for lack of work and was not tainted by any degree of anti-union animus.

Jorge Martinez

29. Jorge Martinez was the Union's key inside organizer. He met with Ray Preston and Frank Santeramo early in the campaign and agreed not only to join the union, but to solicit other employees to join as well. He testified that he did so in what he thought was a logical manner. He assumed that at some point L & L would become aware of his actions and would fire him as a result. Therefore, he started with those most likely to be receptive to invitations to join the union, and to be secretive about that. He also invited a number of people to meetings at the coffee shop on Jane Street, although word of that meeting obviously did get out. There is nothing to suggest that Mr. Raskin identified him at the time as the connection to that meeting.

30. Mr. Martinez carefully avoided people whom he concluded were part of the "core group" or the "boss' people" whom he perceived to be close to management. He said that he believed that talking to some of them, for example, Ignatz Konsag, "was like talking to Leon [Raskin]". Nonetheless, at some point he concluded that he had approached all of the employees who were, in his view, unlikely to report him to management and began to solicit membership from the "core group". He testified that he did so, even though he was reasonably certain that this would lead to his discharge, because he had approached all of the employees likely to join the Union and the "core group" would have to be approached eventually anyway, even though it appeared unlikely that any or many of them would become members. He was also certain that if he lost his job, he would get another through the Union. He was correct in terms of his belief that the word would get back to Mr. Raskin once he did solicit persons from that job. Before he had even approached Ignatz Konsag, Mr. Konsag came to him and wanted to see all of the cards that he had signed. Mr. Martinez, of course, refused to produce any.

31. On March 8, 2006, Mr. Martinez' employment came to an end. There are, in this respect, two different versions of how it ended. Mr. Martinez said Mr. Organisciak had called him that evening and told him that he had less work and would need to lay Mr. Martinez off for a few days. He asked him to stay at home and wait for a call. He apologized and said that he needed to keep the senior guys working.

32. Leonard Raskin said that all he knew about Mr. Martinez was what he had heard from Mr. Organisciak. His evidence was consistent with that of Mr. Organisciak's. Mr. Organisciak testified that he transferred Mr. Martinez from his job at 55 York Street to a job near Burlington. He said that the job at 55 York Street was only a five-day job and there was only a day or less of work left to do on March 7 when he transferred Mr. Martinez. He gave the address to Mr. Martinez as 2125 North Service Road. He did not appear at work on March 8, 2006. Mr. Organisciak said that Mr. Martinez called him because Mr. Martinez was concerned about the cost of the gas to drive that far and complained that the site was too distant for him. Mr. Organisciak told him to speak to Leon, who had the sole authority to determine whether he should be compensated for it or not. Mr. Martinez agreed and said he would see Mr. Organisciak the next day.

33. When he did appear at the site, Mr. Organisciak said that he had arrived late and remonstrated him for this fact. He said that Mr. Martinez got upset and was shouting at him and using foul language. Mr. Organisciak refused to continue the conversation and told Mr. Martinez to call the office, meaning Mr. Raskin. Mr. Martinez then left the site, which left Mr. Organisciak apologizing to a customer who was not going to get any work done for a second day. For obvious reasons, no one testified that Mr. Martinez called Mr. Raskin that day or any other day

34. There are a few objective details that assist in resolving this contradiction. The Union made much of the fact that there is no building at 2125 Service Road. The address of 2125 North Service Road is found on the application for certification as one of the sites listed by the employer. Leon Raskin said that he may have had the address wrong, but no contract or document was produced in evidence in the many subsequent days of hearings to suggest what the correct address was. The lack of interest in following up with Mr. Martinez' employment is consistent with an employer who is happy to see an employee gone from his employment. In addition, as I have already found, L & L was experiencing a downturn in the volume of work in March of 2006. It had laid off, rather than discharged, other employees including Mr. Borodinos, who had clearly been identified as a potential union supporter.

35. More significantly, Mr. Martinez said he interpreted his lay-off for a few days as a discharge. He never bothered to call back about whether there was work because he believed that he had in reality been discharged. There was no "real chance", in his words, that he would be recalled. Thus, there is no evidence about what might have happened if Mr. Martinez had attempted to treat his severance as a layoff, and put the employer to the test of its proffered reason. More inexplicably, he did not call the Union for "a couple of weeks" seeking another job. He was cross-examined as to why he waited so long. If he thought he had been fired, as he expected to be, it is difficult to understand why he would wait so long to ask for the Union's assistance that he had been counting on. On the other hand, it is also inconsistent with a person who makes up a story about a discharge to cover up a quit and then seeks the help of the Union to

bail him out of the situation he has created. If that were the case, one would expect the employee to rush to the union immediately to tell his concocted story.

36. Whether Mr. Martinez quit or was discharged is a difficult question to answer. On balance, I conclude he was discharged. L & L failed to provide any explanation or answer to the Union's evidence, set forth clearly from the beginning of the case, that the address of 2125 North Service Road does not exist. In addition, I have made credibility findings against Mr. Raskin and Mr. Organisciak in other areas. There is no apparent motive for, or likely pattern of behaviour consistent with, a falsehood on Mr. Martinez' part. Ultimately the onus under subsection 96(5) rests on the employer. For these reasons I find Mr. Martinez was discharged

Remedies

37. The question then arises as to the appropriate remedy. The Union argued, following 1443760 Ontario Inc. (c.o.b. *Swingstage Equipment Rentals Ottawa* [2007] OLRD No. 2672, Board File No. 2098-06-R (June 15, 2007) that a single discharge contrary to the Act "is enough" to justify a remedial certification under section 11. That assertion misstates the analysis in *Swingstage Equipment Rentals Ottawa, supra.* A discharge is not simply a single counter that, once inserted into an organizing campaign, will inevitably produce a certificate. What the Board said at paragraph 52 of that decision is:

> The termination of the union organizer is so severe and immediate as to transcend any notion of pattern. It is a decisive and complete response that serves the purpose for which it was intended – to abruptly and effectively end the organizing campaign. A single act of this kind is sufficient.

That is, the Board found in that case that a single act of discharge had a chilling effect on the union's efforts to solicit membership from employees in the bargaining unit. It was not necessary to show a pervasive pattern of conduct because of that one act. A discharge in response to union organizing activity was in that case, and generally would be, sufficient to send a clear and threatening message to employees in the bargaining unit. Less dramatic forms of intimidation of employees would often require a pattern of behaviour before the Board would conclude, as a fact, that it had a chilling effect on the union's organizing campaign.

38. I agree with this general proposition. However, one must look at the facts of each case. Mr. Martinez was terminated on March 8, 2007. He did not call the Union, or anyone else, until a couple of weeks later, on or around the application date. This was a workplace where employees were spread over many worksites that had little interaction with each other when they were not on the same site. Employees were moved from site to site on a daily basis. The discharge of Mr. Martinez would likely not be noticed by anyone unless somebody said something. No employee testified that they had heard that information from Mr. Dokaj, Mr. Organisciak or Mr. Raskin. Indeed, he did not tell the Union he had been discharged until approximately the application date. It is difficult to understand then how his termination would affect anyone.

39. Frank Santeramo testified that after Mr. Martinez was terminated, employees were "shaky" and that he could see there was "a little bit of fear among the members". How he could have seen this when Mr. Martinez did not call the Union for two weeks and no one told the

employees is unclear, to say the least. In fairness to Mr. Santeramo, he testified before Mr. Martinez and therefore was not cross-examined on this issue, as it could not arise from the pleadings or his evidence. However, both individuals were witnesses called by the Union, and neither commented on this apparent contradiction.

40. In fact, the pattern of organizing was not affected by what happened to Mr. Martinez. The Union filed eight cards in this application. The first is dated February 16, 2006. One is dated March 8, two are dated March 14, 2006 and one is dated March 24, 2006. It is impossible in these circumstances to say that the discharge of Mr. Martinez, even if it was known to other employees, had a "chilling effect" on the Union's organizing campaign.

41. Even Mr. Martinez's absence from the job site did not likely affect the results of the campaign. He said that he had approached all of the employees who were likely to be receptive to membership solicitation and had begun to approach the "boss' men", a group that he expected would be unlikely to be receptive to his solicitations. This is the evidence of the chief inside organizer of the Union, and I see no reason not to accept it.

Conclusion

42. In this case, I conclude that the termination of Jorge Martinez did not result in a situation where the Union was unable to obtain more than forty percent of the individuals in the bargaining unit as members. While the Employer did contravene the Act, these violations, individually or cumulatively, did not ultimately lead to that result. The other violations of the Act, particularly the conduct of Mr. Organisciak, were serious matters, but not so serious that the Board could conclude that section 11 was the only appropriate remedy.

43. Therefore, I find and order as follows:

(1) I find that the Employer violated sections 70, 72 and 76 in conducting a surveillance on employees and approaching employees directly to determine who was or was not a member of the Union;

(2) I find that L & L violated section 72 in terminating Jorge Martinez;

(3) I therefore order the Employer to compensate Mr. Martinez for all the wages lost between the date of his discharge and the date on which he first resumed employment with any other employer;

(4) I order L & L to post the notice attached to this decision and to leave it posted for a period of 30 days.

No other relief is appropriate. The Union concedes it had fewer than forty percent of the employees in the bargaining unit as members on the date of application. The application for certification is dismissed pursuant to section 128.1(7) of the Act.

APPENDIX "A"

The Labour Relations Act, 1995
NOTICE TO EMPLOYEES
Posted by order of the Ontario Labour Relations Board

WE HAVE ISSUED THIS NOTICE IN COMPLIANCE WITH AN ORDER OF THE ONTARIO LABOUR RELATIONS BOARD ISSUED AFTER A HEARING IN WHICH BOTH THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 557 AND L & L PAINTING AND DECORATING LTD. HAD THE OPPORTUNITY TO PRESENT EVIDENCE. THE ONTARIO LABOUR RELATIONS BOARD FOUND THAT WE VIOLATED THE ONTARIO LABOUR RELATIONS ACT IN CERTAIN WAYS, INCLUDING TERMINATING THE EMPLOYMENT OF JORGE MARTINEZ, AND HAS ORDERED US TO INFORM OUR EMPLOYEES OF THEIR RIGHTS.

THE ACT GIVES ALL EMPLOYEES THESE RIGHTS:

TO ORGANIZE THEMSELVES;

TO FORM, JOIN AND PARTICIPATE IN THE LAWFUL ACTIVITIES OF A TRADE UNION;

TO ACT TOGETHER FOR COLLECTIVE BARGAINING;

TO REFUSE TO DO ANY AND ALL OF THESE THINGS.

WE ASSURE ALL OF YOU THAT:

WE WILL NOT DO ANYTHING THAT INTERFERES WITH THESE RIGHTS.

WE WILL NOT INTIMIDATE OR EXERT UNDUE INFLUENCE UPON YOU, WHETHER THROUGH MEETINGS, INDIVIDUAL CONVERSATIONS OR OTHERWISE, TO PREVENT YOU FROM EXERCISING YOUR RIGHT TO ASSOCIATE AND PARTICIPATE IN THE LAWFUL ACTIVITIES OF A UNION.

WE WILL NOT LAYOFF, DISCHARGE OR THREATEN TO LAYOFF OR DISCHARGE ANY EMPLOYEE BECAUSE OF THAT EMPLOYEE'S UNION ACTIVITY OR SYMPATHIES.

L & L PAINTING AND DECORATING LTD.

PER: _____
(AUTHORIZED REPRESENTATIVE)

This is an official Notice of the Board and must not be removed or defaced.

This Notice must remain posted for 30 consecutive days.

DATED this 15 day of October, 2007.

1267-07-U; 1268-07-U Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Sheet Metal Workers' International Association, Local 51; **Mike Abaza Proaction Aluminum Inc.;** Eastern Eavestroughing Ltd.; Jackson Roofing GTA Inc.; 413554 Ontario Limited c.o.b. Chouinard Bros. Roofing; Burnhamthorpe Roofing Company Limited; Donia Aluminum & Roofing Limited; Colombus Aluminum and Roofing Ltd.; Trudel & Sons Roofing Ltd.; E.P. Siding Inc.; Expert Eavestroughing; Chouinard Bros. Aluminum Ltd.; Giancola Aluminum Contractors Ltd.; GM Exteriors Inc.; Aspen Aluminum Ltd.; Goreski Roofing and Lathing Ltd.; GTA Aluminum Inc.; CRO Aluminum Inc., Responding Parties; Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Applicant v. Sheet Metal Workers' International Association, Local 51; Ken Morin, Tops Roofing Ltd., Eastern Eavestroughing Ltd.; Jackson Roofing GTA Inc.; 413554 Ontario Limited c.o.b. Chouinard Bros. Roofing; Burnhamthorpe Roofing Co. Ltd. (1994); Donia Aluminum & Roofing Limited; Colombus Aluminum and Roofing Ltd.; Trudel & Sons Roofing Ltd.; E.P. Siding Inc.; Expert Eavestroughing; Chouinard Bros. Aluminum; Giancola Aluminum Contractors Ltd. and/or Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Aspen Aluminum Ltd.; Goreski Roofing and Lathing Ltd.; GTA Aluminum Inc.; CRO Aluminum Inc., Responding Parties

Fraud – Standing – Unfair Labour Practice – The Carpenters complained that the Sheet Metal Workers committed a fraud on the Board that led to the Board issuing certificates to the SMW in respect of units of employees engaged in roofing and siding (in *Proaction Aluminum* and *Tops Roofing*) – The SMW subsequently filed other applications for certification seeking to displace the Carpenters – While they initially sought to rely on the trade union status they were awarded in *Proaction* and *Tops*, the SMW led new evidence to establish its status, independent of the earlier applications – The Carpenters sought an order from the Board revoking the earlier certificates and barring the SMW from bringing fresh applications for a period of one year – While the Board expressed its concern for the alleged conduct of the SMW in *Proaction* and *Tops*, it found that the Carpenters had no standing to bring the instant complaint: the Carpenters had no collective agreement with either of these employers, and they could provide no evidence that they had been victims of the fraud and had suffered some loss – Application dismissed

BEFORE: *David A. McKee*, Vice-Chair, and Board Members *John Tomlinson* and *Richard Baxter*.

APPEARANCES: *Harold F. Caley, Darren Sharpe* and *Mike Vukovic* for the applicant; *S.B.D. Wahl, Robert White* and *H. Biso, Jr.* for Sheet Metal Workers' International Association, Local 51; *Kelsey Orth* for Goreski Roofing and Lathing Ltd.

DECISION OF THE BOARD; September 24, 2007

1. This is a complaint filed pursuant to section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). It is brought by Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America ("the Carpenters"). The Carpenters are currently bargaining agent for a number of bargaining units of employees engaged in shingling, roofing and siding work in the residential sector. The Carpenters allege that Sheet

Metal Workers International Association, Local 51 (the "Sheet Metal Workers") and specifically certain officers of that Local Union, engaged in a fraud on the Board in respect of two applications for certification brought in respect of employees of Proaction Aluminum and Tops Roofing (both of which appear to be sole proprietorships) which resulted in the Board issuing certificates to the Sheet Metal Workers in respect of units of employees engaged in roofing and in siding respectively. Since that time the Sheet Metal Workers have brought certification applications seeking to displace the Carpenters as bargaining agent for employees of all of the companies listed in Schedule "B" to the application (who are the main roofing and siding contractors whose employees the Carpenters represent) and indeed other applications seeking to displace the Carpenters in other areas.

2. The Sheet Metal Workers seek to have the Board dismiss these applications on a number of grounds, without a hearing. For purposes of this motion, we have assumed that all of the facts alleged in the two complaints are true and provable and that the conclusions the Carpenters seek to draw from those facts are conclusions that the Board would draw.

3. With respect to Tops Roofing, the Carpenters allege as follows:

> ...
>
> 2. It would appear that the date of the Application for Certification is dated November 24, 2006. The Certificate of Delivery indicates the Application was delivered before 5:00 p.m.; the Response was faxed to the Board at 15:39 on the same date yet it is dated November 26/06 and the Certificates of Delivery make no sense.
>
> 3. The Responding Party, Tops Roofing, indicated three job sites in its Reply. The Responding Party, Tops Roofing, did not perform any work at these job sites, at any time. With respect to the job sites, Ken Morin performed work on the sites but not under Tops Roofing and the work was completed prior to November 24, 2006.
>
> 4. Mr. Ken Morin and perhaps other persons he listed as "employees" of Tops Roofing, is listed on the November remittance forms for Chouinard Bros. and he is a Crew Leader who works for Chouinard Bros. We enclose a copy of the remittance form for November, 2006.
>
> 5. One of the contact persons in the Application for Certification is Mr. Steve Wolfreys, who is a brother-in-law to the alleged owner of the Responding Party, Tops Roofing, Mr. Ken Morin. We assert that it is a reasonable inference that this Application for Certification was filed with the support of the Responding Party, Tops Roofing.
>
> 6. Mr. Ken Morin admitted to the Board at the hearings relating to status of Local 51 that Mr. Steve Wolfreys assisted his wife (and sister of Steve Wolfreys) in completing the Reply to the Application for Certification.
>
> 7. Tops Roofing has no employees whatsoever and did not have employees on the date of the Application for Certification.

8. No work was performed by Tops Roofing at the job sites listed on the date of the Application for Certification or the Response; Local 51 assisted the Responding Party in completing the Reply; there were no employees whatsoever at work on the date of the Application for Certification.

9. The Responding Parties committed a fraud on the Board with respect to the Application for Certification and colluded in order to allow Local 51 to obtain status in a friendly environment.

10. No notice to bargain was ever served on Tops Roofing by Local 51.

...

4. The allegations with respect to Proaction Aluminum are as follows:

...

2. While the Reply indicated that there were 3 employees only 2 were listed; we would like the name of the third employee who worked on the job site and request to know whether or not it was Mike Abaza the owner.

3. The Reply indicated that the employees were employed on the job site on November 27 yet the Application date is November 24th.

4. It would appear that the date of the Application for Certification is November 24, 2006.

5. The owner of Proaction Aluminum Inc., Mr. Mike Abaza, stated that on November 26 or 27, 2006, Steve Wolfreys, a representative of the Applicant, came to his home and had a couple of beers, Mr. Wolfreys completed the Reply of the Responding Party and had Mr. Abaza sign the Reply and it was then faxed to the Board. Mr. Abaza states that Mr. Wolfreys told him that he was putting Mr. Abaza through this (the certification) but that he would get him a lot of work. The job listed in the Reply was put there by Steve Wolfreys and Mr. Abaza has confirmed that his company did *not* perform any work at that location and the Applicant was not only aware of this fact but was responsible for the job being listed in the Reply.

6. The owner of the property listed at the job site in the Application for Certification and Response was contacted and she indicated that there was no work whatsoever performed on her property by Proaction Aluminum Inc. or Mr. Abaza on November 21, 24 or 27, 2006 or any other dates.

7. Local 51 obtained the membership cards when the persons were at the home of Mr. Abaza and in his presence.

8. Proaction Aluminum Inc. has no employees whatsoever and did not have employees on the date of the Application for Certification.

> 9. No work was performed at the job site listed on the date of the Application for Certification or the Response; Local 51 assisted the Responding Party in completing the Reply; there were no employees whatsoever at work on the date of the Application for Certification;
>
> 10. No notice to bargain was ever served on Proaction Aluminum Inc. by Local 51.
>
> ...

5. The Carpenters are not concerned solely with these two applications for certification and the certificates that issued. The purpose of bringing these applications was to establish that Local 51 had status as a trade union as defined in section 1 of the Act and as a trade union that pertains to the construction industry as defined by section 126 of the Act. When the "open season" commenced on February 1, 2007, the Sheet Metal Workers brought the displacement applications against all or most of the roofing and siding contractors whose employees the Carpenters represented. Initially, they relied on the Board's finding that the Sheet Metal Workers had status under both section 1 and section 126. This was challenged by the Carpenters Union. Ultimately, and according to the Carpenters, just before the matter was set to begin, the Sheet Metal Workers abandoned any reliance on the certificates issued in respect of Proaction and Tops Roofing employees and undertook to lead evidence themselves to prove the status of Local 51. They succeeded in doing so in *Eastern Eavestroughing Ltd.* [2007] OLRD 2721 (issued June 20, 2007), request for reconsideration denied [2007] OLRD 3178 (July 13, 2007).

6. The Carpenters seek the following relief in both applications:

> "The Certificate issued in [the Tops Roofing & Proaction Aluminum applications] should be cancelled; the Board should not entertain any Applications for Certification filed by Local 51 for a period of one year commencing November 24, 2006; the Board should terminate all Applications for Certification filed by Local 51 since November 24, 2006.
>
> The Applications for Certification relating to the companies named on *Schedule "B"* should be dismissed by the Board.
>
> The Applicant requests any other relief that may be appropriate."

Analysis

7. The Sheet Metal Workers argued that the Carpenters had no status to bring the complaint in that they had no collective agreement with either Tops Roofing or Proaction Aluminum and had filed no proof of membership for any employee, past or current, of either company. The Carpenters responded that, given the nature of their allegations, no party would ever have status in that sense since they say that neither company is really an employer, and neither has ever employed any employees or done any construction work as a contractor. The Carpenters identify their legal interest as the intended primary victim of the fraud that they say the Sheet Metal Workers have perpetrated on the Board. The purpose of the fraud on the Board was to enable the Sheet Metal Workers to attack and undermine the Carpenters' bargaining rights.

8. We accept that in order to deal with this complaint, we might be prepared to find the status to bring the complaint on these facts. The real issue raised by the Carpenters' response is where the direct or indirect harm to the Carpenters' legal interests is to be found in the events alleged. The Sheet Metal Workers are correct when they argue that, generally, the Board expects an applicant to demonstrate either bargaining rights (a voluntary recognition agreement, a certificate or a collective agreement) or representation rights for an employee in the bargaining unit as the basis for bringing the complaint. That is because an applicant union must demonstrate that its legal rights are harmed in some fashion. If it has bargaining rights, the harm to its institutional interests is self-evident. If it represents one or more employees affected by the fraudulent certificate, the rights of the individual member not to be part of a bargaining unit that is not the freely-chosen representative of the employees, constitutes the "harm" that is the foundation of the right to bring a complaint.

9. However, in this case, the harm is not, and given the facts could never be, the basis of any harm to the Carpenters' Union in either capacity. The real issue is not the application of a list of facts the Board has looked for in other types of applications, but to ascertain whether the harm identified by the Carpenters is such that the Board would grant any relief, or the type of relief specifically sought in these applications.

10. The type of relief sought is an extraordinary type of relief. While subsection 96(4) permits the Board to make any order requiring a respondent party to do or refrain from doing virtually anything, the Act does not generally appear to contemplate the kind of relief sought in this application. Section 64, which deals with the specific issue of fraudulently-obtained certificates, contemplates a fairly drastic and far-reaching remedy, but one restricted to the specific certificate and any collective agreements that might flow from it:

> **64.** (1) If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the bargaining unit and, upon the making of such a declaration, the trade union is not entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, the collective agreement is void.
>
> **Non-application**
>
> (2) Subsection 8 (9) does not apply with respect to an application for a declaration under subsection (1).
>
> **Decertification obtained by fraud**
>
> (3) If an applicant has obtained a declaration under section 63 by fraud, the Board may at any time rescind the declaration. If the declaration is rescinded, the trade union is restored as the bargaining agent for the employees in the bargaining unit and any collective agreement that, but for the declaration, would have applied with respect to the employees becomes binding as if the declaration had not been made.
>
> **Non-application**
>
> (4) Subsection 63 (13) does not apply with respect to an application for the rescission under subsection (3) of a declaration.

Similarly, section 53 deals with an agreement that will not be deemed to be a collective agreement if the union has received "employer support", but prescribes a remedy limited to the specific agreement in question. There are also bars to applications for certification that are or may be created under sections 7, 10, 128.1 and 111(2)(k), all of which relate to specific bargaining units, although none of them are predicated on a finding of wrongdoing.

11. Unless a specific order is made in this complaint, the Board is generally not in a position to refuse to entertain an application for certification. In *Trenton Construction Workers Association, Local 52, CLAC v. Tange Company Limited*, 63 C.L.L.C., 15,459 (1963) 39 D.L.R. 593 and [1963] 2 O.R. 376-393, Chief Justice McRuer (as he then was) quashed a decision of the Board, in part because the Board had, in his Lordship's view, relied on evidence about the nature and character of the union given in a previous case. More recently, in *Ontario Power Generation*, [2005] May/June 464 (May 30, 2005) at page 467 and *PBS General Contractors Inc.* [2007] OLRB Rep. March/April 412, the Board has concluded that it has no general discretion to refuse to grant an application for certification simply on the basis of general labour relations considerations not grounded in the Act.

12. The one section that does prevent a union organization from making any sort of application for certification is section 15, which provides:

> **15.** The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*.

For the most part the section does not deal with the specific acts of a trade union in any one certification application, but rather deals with its origins or internal functioning as a trade union. The section contemplates that the consequences of a finding are fairly drastic for any activity in which a union is engaged up to the date such a finding is made, and certainly would result in the dismissal of any application for certification in which such a finding was made.

13. The one exception is the prohibition against an employer providing "other support". An employer might well provide other support in the formation of a trade union, but that is not alleged in this complaint. It might also provide "other support" in the context of a particular application or in a voluntary collective agreement relationship, although that would appear to be what section 53 deals with. In that case the Act provides that the Board shall not certify the union, at least in that application. The question is whether it would be appropriate to refuse to certify the union in other contexts. That question engages the issue of the nature and extent, if any, of the Carpenters' legal rights and interest, and the manner in which they have been allegedly affected by the "other support".

14. The Carpenters assert that their interest, and the harm done to it, is as follows. The Carpenters represent bargaining units of persons engaged in roofing and siding in the residential sector. The Sheet Metal Workers, in concert with former representatives of the Carpenters Union who had general responsibility for these bargaining units (and enjoyed a level of support from the persons represented by the Carpenters) determined to "interfere" with those rights by means of displacements applications. A timely displacement application is, of course, perfectly lawful.

One of the hurdles they faced in doing so was the creation of a new local union, and the requirement that that new union prove that it had status as a trade union and as a "construction trade union" as defined in section 126. In order to create that status, the Carpenters allege that the Sheet Metal Workers created the appearance of a collective bargaining relationship with persons who are not employers and had no employees. The Sheet Metal Workers then presented the paper evidence of this fraud to the Board, seeking to gain status, which they eventually did in these two applications in November of 2006.

15. During the "open period" in 2007, the Sheet Metal Workers made a number of displacements applications seeking to displace the Carpenters as bargaining agent for employees of roofing and siding contractors. They relied on their previously-found status as a trade union within the meaning of section 1 and section 126. This status was challenged by the Carpenters. At the last minute, according to the Carpenters' statement of events, the Sheet Metal Workers abandoned their reliance on the findings of the Board in the Tops and Proaction certification applications and undertook to lead evidence to establish their status in the displacement applications. Thus, the matter was determined by the Board anew, and in a context where the factual allegations and legal arguments could be challenged by the Carpenters. In *Eastern Eavestroughing*, *supra*, the Board issued a decision finding that the Sheet Metal Workers had status. It did not deal directly with the issues of the allegations with respect to Tops and Proaction, but found:

> The allegations which Local 27 has raised, and which it claims relate to sections 15, 64 and 70 of the Act, are extremely serious, as are the potential consequences which it claims should follow for Local 51 if they are proved. However, none of the complained of conduct relates directly to these eight applications for certification (at least since Local 51 advised that it would not be relying on the Board's decisions in the Tops and Proaction applications and presumption provided by section 113 of the Act in respect of its status). There are no allegations directly linking support by either Tops and Proaction, or any alleged fraud upon the Board in those two initial applications, to the collection of membership evidence for, or the filing of applications in and/or responses to, these eight subsequent applications. Further there are no allegations that the violations of the Act said to have occurred in respect of the Tops and Proaction applications at the end of November 2006 continued into February and March 2007 when these eight subsequent applications were filed.

16. Thus, whatever the outcome of this application, the Sheet Metal Workers have proved their status before the Board in other proceedings before the Board unrelated to these two applications. Indeed, the remedies proposed by the Carpenters acknowledge that: the proposed one-year bar would restrain the Sheet Metal Workers from bringing applications for certification until November 2007, but do not undermine its status to act as a construction union after that date.

17. The Carpenters characterized the actions of the Sheet Metal Workers in the Tops and Proaction matters as follows: it was a deliberate pre-meditated fraud on the Board; it undermined the integrity of the Board's process; such actions lead to a greater suspicion about all evidence filed by all trade unions, much of which the Board relies on, and in the case of membership evidence, without anyone else being able to challenge it; the relationship with Tops and Proaction

was a sham designed to obtain a benefit that the Sheet Metal Workers were not otherwise entitled to gain at that point; the fraud involved false declarations under Form A-74, a document that still remains part of the Board's process and involved a fraudulent misrepresentation to the Board. The Carpenters argue that such a grievous breach of the basic requirement of honesty before the Board and such a flagrant abuse of the Board's process should not go unremarked.

18. If the facts as alleged by the Carpenters are true and provable, most of these statements are probably quite accurate characterizations of the Sheet Metal Workers' behaviour. As such, they are serious matters to the Board, and potentially may have an effect on the Board's process independent of any harm to any individual party. However, the Board is not an independent actor in this area, with its own institutional interests that it seeks to prosecute or defend. The Board is an adjudicative body that adjudicates matters arising between or among the parties to an application, and it does not have an interest in the outcome of any case beyond what is made necessary by the facts of the case and the positions taken by the parties. For example, a non-sign allegation is an extremely serious matter if the Board finds that a membership card was submitted that was not, in fact, signed by the employee whose signature purports to be on it. However, if a union realizes that the allegation is correct and withdraws the application, the Board has never done anything beyond what was appropriate in the particular application for certification. That is quite definitely a fraud upon the Board, but its effects do not extend beyond the individual application for certification.

19. Accordingly, in these applications, the Carpenters must demonstrate that they have indeed been the victims of the fraud that they allege occurred in the sense that they must have suffered some loss. In our view, they cannot do so. The Sheet Metal Workers obtained no benefit whatsoever from the certificates obtained in Tops and Proaction. They ultimately chose to abandon any attempts to rely on those findings. The Carpenters had the opportunity to test the Sheet Metal Workers' assertions of status without reference to any benefit that may have accrued from the Tops and Proaction cases. They have not been the victims of any activity by the Sheet Metal Workers involving those two companies. Any fraudulent activity has had no effect on the Carpenters at all.

20. The worst that could be said of the Sheet Metal Workers is that they attempted to commit a fraud on the Carpenters, and took the first steps in doing so in obtaining certificates in respect of Tops and Proaction, but ultimately abandoned this plan before any harm arising from the fraud occurred to the Carpenters. The concept of attempted wrongdoing is a criminal law concept, not one found in the *Labour Relations Act*. To provide a remedy for a plan of action that was initiated to harm the Carpenters, which was advanced to a certain stage along the way, and then abandoned before any harm was actually done to the Carpenters Union, would be to provide a punitive remedy rather than a restorative or compensatory one, something the Board is not able to do: see *Tandy Electronics Ltd. (Radio Shack) v. United Steelworkers of America and Ontario Labour Relations Board*, (1980) 115 D.L.R. (3d) 197.

21. There is therefore no harm to the legal interests of the Carpenters Union that it would be appropriate to remedy in any way. The scheme, if there was one, was abandoned before it had any effect on the Carpenters. If there is no remedy that would be appropriate, then there is no labour relations purpose inquiring into the complaint.

22. The Carpenters also asked for remedies in these two applications, seeking the revocation of the certificates issued. This too is a matter that, at present, does not affect the Carpenters. If, as they say, neither Tops nor Proaction is truly an employer at all, it will never have any effect on the Carpenters. If there is a time when the Sheet Metal Workers wished to rely on the two certificates and all collective agreements that may arise out of them (e.g. an accreditation application, a jurisdictional dispute, or other such proceeding), the Carpenters will be able to seek to adduce the evidence they have to cause the Board to disregard any reliance on these bargaining rights that it might otherwise place. Since the Carpenters have no legal interest that could be affected by the current existence of these certificates, no relief would be appropriate at this time, although it might be in future.

23. The Board has a discretion under section 96 whether or not to inquire into the application. In this case, while we are extremely troubled by the nature of the allegations made, because no relief to the Carpenters Union would be appropriate, whether the relief sought in this application or any other relief, we exercise our discretion not to inquire into these applications.

24. Although we conclude that this is the proper result in this case, we are troubled by the fact that we have not heard the evidence about what, if it is true, would be a serious fraud on the Board. Certainly the statements and responses of the two employers do nothing to allay those concerns. We are made very uneasy by the prospect that the Board may have been the victim of certain wrongful action, but in the absence of a party with the right to pursue the matter, we will not be able to get to the bottom of the issue. We do not regard the possibility that the Board may have been used in such a manner to further inter-union disputes or personal quarrels as a matter that we should have no concern about. In the circumstances, we will not hear the evidence. In other circumstances it would take only a very minor legal interest on the part of virtually anyone to cause the Board to entertain this evidence.

25. These applications are therefore dismissed.

2664-06-ES Miikyway Phan, Applicant v. JCD Holdings Inc. o/a Envirotrends and Director of Employment Standards, Responding Parties

Employment Standards – The employee claimed unpaid wages related to a "points" program introduced by the employer to encourage employees to sell certain products – Points could be redeemed by: (i) submitting medical claims to the employer for reimbursement on a dollar for dollar basis; (ii) using them to buy products from the store up to a maximum of $500 per time; or (iii) requesting a payout of points as wages, subject to statutory deductions – The employer took the position that the points did not constitute wages – The Board found that the point system had a specific monetary value that when taken as money was considered by the employer to be "wages" and subjected to statutory deductions – The Board rejected the argument that the employee's termination somehow negated her entitlement to redeem her earned points for money because: (i) the employee was never advised that termination of her employment would affect her entitlement to redeem her points for money, (ii) the employee's entitlement was defined and calculable as of the date of termination, and (iii) as the employer conceded, had the employee known that

she was going to be terminated she could have cashed out her points one way or another prior to the date of her termination – Appeal Allowed; Order for wages issued

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *Milkyway Phan* on her own behalf; *Darlene Bergen* appeared on behalf of JCD Holdings/Envirotrends; no one appeared on behalf of the Director of Employment Standards.

DECISION OF THE BOARD; October 4, 2007

1. The style of cause is hereby amended to reflect the correct name of the responding employer: "JCD Holdings Inc. o/a Envirotrends".

2. This is an employee application under s. 116 of the *Employment Standards Act, 2000*, brought by Milkyway Phan for unpaid wages.

3. A hearing was held in Ottawa on October 1, 2007. Further to the Board's decision of September 27, 2007, the employer, JCD Holdings Inc. o/a Envirotrends, which is based in Manitoba, chose to attend by means of conference call. During the course of the hearing, the parties were able to agree on most of the material facts. Ms. Phan made some statements which the employer was not in a position to contradict at the time of the hearing. The parties agreed to proceed to final argument on that basis.

4. Ms. Phan worked as a sales person at a retail store operated by the employer in Ontario. The store sold hair care products. Ms. Phan was paid $8.50 per hour and certain earned bonuses twice per month. The bonuses were based on achieving sales goals. As discussed further below, she also accumulated "points" pursuant to a program owned and operated by the employer and introduced to encourage employees to sell certain products. Her claim for unpaid wages relates to the point program.

5. Employees earned points by selling "partner products". For the purposes of the points program, partner products were considered to be "bronze items", "silver items" or "gold items". Employees earned one third of a point for every bronze item sold, two thirds of a point for every silver item sold and one full point for every gold item sold.

6. Points were valued at a rate of one point to one dollar and could be redeemed in one of three ways. At any time during the year, employees could submit medical claims to the employer and be reimbursed on a dollar for dollar basis, provided that they had sufficient points in their accounts. At two predetermined times per year, employees could redeem their points in the other two ways. Employees could use them to buy products from the store, up to a maximum of $500 per time. The employer indicates that this cap arises from a limit imposed by the Canadian Revenue Agency. Alternatively, an employee could request payout of points in their account as wages. Such payouts were subject to the same level of statutory deductions as any other wages and were recorded on statements of earnings as a "bonus".

7. Ms. Phan states that the program was introduced to employees at her store by way of oral presentation. Ms. Phan states that it was never referred to as a points program, rather the

accumulating benefits were referred to as "Medical Dollars", "Extraordinary Rewards" or simply dollars. She also states that she was never told that she would not be entitled to claim any unused dollars accrued to her benefit at the time of the termination of her employment, which is why she allowed the amount to grow so large.

8. The employer agrees that the program was introduced by way of oral presentations. While it states a law firm in Manitoba was preparing certain documents in relation to the program at the time that it was introduced to employees, those documents were not provided to employees until after Ms. Phan left her employment. At the time of the hearing, it was not in a position to dispute Ms. Phan's statements about what was said when the program was introduced at her store.

9. Both Ms. Phan and the employer agree that the manager in her store kept track of the points earned by sales representatives. Ms. Phan states that in her store the reference was always to "dollars", not "points", the manager posted the value of the employees' earned points and at the time of the termination, her point account was worth $689.31. The employer's representative was unable to confirm or deny this amount, but for the purposes of the hearing stated that she had no reason to doubt it.

Analysis

10. Section 1(1) of the Act defines wages as follows:

> "wages" means,
>
> (a) monetary remuneration payable by an employer to an employee under the terms of an employment contract, oral or written, express or implied,
>
> (b) any payment required to be made by an employer to an employee under this Act, and
>
> (c) any allowances for room or board under an employment contract or prescribed allowances,
>
> but does not include,
>
> (d) tips and other gratuities,
>
> (e) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency,
>
> (f) expenses and travelling allowances, or
>
> (g) subject to subsections 60 (3) or 62 (2), employer contributions to a benefit plan and payments to which an employee is entitled from a benefit plan; ("salaire")

11. The points accumulated by Ms. Phan under the point system had a specific monetary value, calculated at a conversion rate of one point equalled one dollar. Further, when an employee elected to take the points as money, the resulting amounts were considered to be "wages" by the employer and subjected to statutory deductions. While such payments were reported on the employee's statement of earnings as a "bonus", the payments were related to production (i.e. sale of certain products) and in any event were not discretionary. In my view, therefore, the points were wages within the meaning of the Act.

12. The employer states that the points program is not a commission but rather was one of a variety of reward programs established by the employer, and owned and operated by it. It concedes that payments under the program are non-discretionary, but states that was only the case so long as the employee was a member of the program. While the employer acknowledges that had Ms. Phan known that she was going to be released she could have used up all of her points as of the last time redemption was permitted, on purchases or taken as wages, and subsequent to that through the submission of medical claims, it states that upon termination of employment she was no longer a member of the program and no longer entitled to participate in it. It provides no authority in support of its position.

13. I am not persuaded by these arguments.

14. The fact that the employer owns the reward program is irrelevant.

15. It is also hard to see why the termination of Ms. Phan's employment should affect her entitlement. First, her uncontradicted evidence was that she was never advised that it would. Second, her entitlement was defined and calculable as of the date of termination. Third, as the employer concedes, had she known that she was going to be terminated she could have cashed out her points one way or another prior to the date of her termination. (By listing three reasons, I do not determine that all are necessary or that any one is sufficient by itself.) I can see no basis, therefore, for the argument that what were otherwise wages within the meaning of the Act lost that characteristic merely because Ms. Phan's employment was terminated. There is no logical basis for this distinction and the potential for abuse is manifest. The termination of her employment simply means that the accrued wages become due and payable within seven days as required pursuant to section 11(5) of the Act.

16. In the result, I find that Ms. Phan is owed $689.31 by JCD Holdings Inc. o/a Envirotrends.

DISPOSITION

17. JCD Holdings Inc. o/a Envirotrends is ordered to pay Milkyway Phan the sum of $689.31 in unpaid wages. If these funds are not paid within 30 calendar days of the date of this decision, it will become an order to pay in favour of the Director of Employment Standards in trust for Ms. Milkyway Phan, along with the minimum statutory administrative fee of $100.

4225-05-M Canadian Union of Public Employees and its Local 4540, Applicant v. **Montfort Renaissance Inc. (Service de santé des soeurs de la charité d'Ottawa)**, Responding Party

Reference – *Hospital Labour Disputes Arbitration Act* – This Ministerial reference requested the Board's advice on whether employees of Montfort Renaissance Inc. ("MRI") were covered by the Act – The Board used the following criteria to determine whether MRI met the statutory definition of a "hospital" as set out in the HLDAA: (i) the entity must

serve persons who suffer from physical or mental illness, ongoing disease or be convalescent or chronically ill; (ii) the entity must be a hospital or "other institution"; and (iii) the entity must be operated for the observation, care or treatment of such persons – Firstly, the Board held that there could be no doubt that persons whom MRI served in all three of its programs (mental health and housing, health stop, and Detox Centre) were persons who suffered from physical or mental illness – Secondly, having regard to the purpose of the HLDAA, which is to ensure uninterrupted delivery of services to those vulnerable persons whose health and safety could be jeopardized if those services were unavailable because of a strike or lockout, the Board found that MRI's Detox Centre met the definition of "hospital" in the HLDAA – In response to MRI's assertion that the Addiction Workers working in the Detox Centre did not provide services that could be characterized as medical in nature and did not have any medical training, the Board held that the observation, care or treatment contemplated under HLDAA need not be medical in nature to fall within the statutory definition – Thirdly, the Board was satisfied that the Detox Centre was operated for the observation, care and treatment of residents in the detoxification process – Finally, regarding the question of whether MRI, when considered as a whole (all three programs), was properly characterized as an "other institution", the Board held that it was, since the statutory scheme contemplated the possibility of over-inclusion – In the result, the Board's advice to the Minister was that MRI was a "hospital" within the meaning of the HLDAA

BEFORE: *Caroline Rowan*, Vice-Chair.

APPEARANCES: *Nancy Rosenberg, Jean-Marc Bézaire, Brian Grant* and *Cathy Demetre* appeared on behalf of the applicant; *Noëlle Caloren, Nadia Effendi* and *Jeanne-Hélène Tardivel* appeared on behalf of the responding party.

DECISION OF THE BOARD; September 5, 2007

1. This is a Ministerial reference pursuant to section 3(2) of the *Hospital Labour Disputes Arbitration Act* ("HLDAA"). The question which has been referred to the Board for its advice is the following:

> Are employees of Montford (sic) Renaissance Inc. (Service de santé des sœurs de la charité d'Ottawa) covered by the *Hospital Labour Disputes Arbitration Act?*

2. The term "hospital" is defined in HLDAA as follows:

> "hospital" means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain and includes a home for the aged;

3. The criteria that must be met in order for an organization to be found to meet that statutory definition are outlined in *Therapeutic and Educational Living Centres Inc.*, [2000] OLRB Rep. March/April 400 (April 18, 2000) at page 403:

(i) The entity must serve persons who suffer from physical or mental illness, ongoing disease or be convalescent or chronically ill;

(ii) The entity must be a hospital or "other institution";

(iii) The entity must be operated for the observation, care or treatment of such persons.

Facts

4. The facts relevant to this referral were not in substantial dispute. The Board heard evidence from five witnesses. Ms. Jeanne-Hélène Tardivel, the general manager of Montfort Renaissance Inc. ("MRI"), and Mr. Jean La Haie, the supervisor of the employees of the Ottawa Withdrawal Management Centre (the "Detox Centre") at MRI, testified on behalf of MRI. Mr. Jean-Marc Bézaire, a National Representative for Canadian Union of Public Employees ("CUPE"), Ms. Cathy Demetre, an addiction crisis worker employed at the Detox Centre, and Ms. Judy Taylor, a public health nurse with the City of Ottawa, testified on behalf of CUPE. Their evidence may be summarized as follows.

5. MRI is a not for profit organization that came into existence in 2002. Its objects include assisting persons with disabilities and offering them support for their housing. In April of 2005, MRI became responsible for the Detox Centre, which was previously sponsored and operated by the Sisters of Charity Hospital. At that time, Montfort Hospital assumed sponsorship of the program and assigned responsibility for management of the Detox Centre to MRI. At the time of the transfer in April 2005, CUPE was the bargaining agent for employees of the Sisters of Charity Hospital, including its employees working at the Detox Centre, and labour relations of the Detox Centre fell under the jurisdiction of HLDAA. It is the transfer of responsibility for the Detox Centre to MRI in 2005, which has raised the question of whether HLDAA continues to apply in the context of MRI's organization.

6. MRI currently operates and manages the following three separate programs:

1. a program related to mental health and housing;

2. a program referred to as health stop or "Accès Guichet"; and

3. the Detox Centre.

Each of these programs has its own manager, who report to Ms. Tardivel. Ms. Tardivel, in turn, reports to the board of directors of MRI.

Program related to Mental Health and Housing

7. This is a community service that offers two services: 1. housing support for people with disabilities and 2. general housing support involving rent subsidies. MRI provides housing under this program at buildings in Ottawa and Hawkesbury. It also offers housing in apartments rented in private residences. MRI can accommodate housing for approximately fifty people.

8. The criteria that residents have to meet in order to be housed under this program are:

1. having been diagnosed with a mental health problem by a doctor;

2. having a reintegration plan developed with a social worker;

3. being able to live autonomously on a daily basis, including being able to prepare food and do their own washing without assistance.

Residents are permitted to have a family in the lodging and they have their own key to their housing unit. Once accepted into the program, residents sign rental agreements yearly. Thirty to forty percent of these agreements are renewed annually. The average length of stay of an individual accepted into this program is six months. Some residents have however been housed in the program since its inception in 2002. MRI collects rent from residents, the amount of which varies from $200 to $600 depending on the resident's income.

9. MRI employs two full-time individuals for the mental health and housing program. One of these individuals is the manager of the program and the other is an administrative assistant. The manager is responsible for the two buildings, including ensuring that the rent agreements are signed and that rents are deposited in the bank every month. The administrative assistant is responsible for all of the administrative follow-ups such as taking cash or cheques from residents on a monthly basis for rent and giving residents receipts, answering the phone and maintaining the files. These individuals work out of MRI's offices in Ottawa.

10. There are an additional thirteen individuals who work for the program and are known as partners. These partners are not employed by MRI, but rather are employees of agencies with whom MRI has partnership agreements. MRI has service agreements with Horizon Renaissance, Maison Fraternité Inc., Salus Corporation of Ottawa and Canadian Mental Health. They are one year agreements that are renewable and may also be cancelled without notice. MRI has a contract with the Ministry of Health to provide the services under this program and subcontracts the operation of it to these four partners. Each of these partners has slightly different roles but all have the same goal, which is to make the resident autonomous. The partners work as case managers managing residents with mental health problems. They offer residents support, including legal and financial assistance. They report to their own employers. MRI also has two other contracts for IT services and for maintenance of the buildings associated with this program. MRI has an agreement with an individual who cleans the buildings and with another individual who looks after files in Prescott-Russell.

11. There is a resource centre in both Ottawa and Hawkesbury. They are managed with the assistance of MRI's partners and are part of the support offered by the mental health and housing program to residents to assist them with various problems including legal or financial ones. In Ottawa, the resource centre is located within the building where residents reside whereas in Hawkesbury it is located elsewhere.

12. In the 2005-2006 fiscal year, the program for mental health and housing accounted for $1.2 million of MRI's overall budget of $2.6 million. This amount was expected to increase by twelve percent in the following year's budget. The monies are allocated such that approximately ninety percent is used for services to residents and ten percent is used for the buildings. The

salaries for MRI's two employees working for this program, the manager and the administrative assistant, are paid for out of these budget monies and are supplemented by monies paid by residents for rent. Rent monies are also used to pay for the maintenance of the buildings and associated services.

13. According to Ms. Tardivel, in the event of a strike by the employees of MRI's partners, those partners would be required to provide the services or face penalties. If they could not, MRI would have to find someone else to provide the services because of MRI's legal obligation to the Ministry of Health to provide them. If the services offered under this program stopped, residents of the program would be at some risk in the long-term.

Accès Guichet or Health Stop Program

14. The Accès Guichet or health stop program is a collaboration between MRI and fifteen different partners. It is aimed at uniting all of the French speaking services for mental health, addiction and gambling by providing a central website and phone number to access the available services in Ottawa (and later within a wider geographic jurisdiction). The program was not yet operational at the time of the hearing in this matter. The budget for the Accès Guichet is approximately $200,000 and is entirely funded by the federal government.

Detox Centre

15. The third and final program operated by MRI is the Detox Centre. The centre offers non-medical residential withdrawal management services to people over the age of sixteen who are in a state of intoxication or withdrawal from alcohol and/or drugs or otherwise in crisis as a consequence of their addiction and whose condition does not require a medical setting. The centre does not admit unconscious or non-ambulatory persons and those with injuries or complicating medical conditions must be referred to the hospital for treatment. The vast majority of the centre's residents are homeless even though the service is not restricted to the homeless. Many of the residents also have mental health problems and multiple addictions. The Detox Centre has been in existence for approximately thirty years but has only been managed by MRI since April 2005. It is the only detoxification centre of its kind in Ottawa.

16. According to the parties, under the terms of *The Liquor License Act*, the police have the power to bring intoxicated persons to a hospital rather than charging them. The police may also bring an intoxicated person directly to a detoxification centre that is sponsored by a "Schedule 1" hospital which has an emergency room.

17. Sponsorship for the Detox Centre has changed on a number of occasions in the past. The Detox Centre was initially sponsored by the Ottawa General Hospital and then later by the Elizabeth Bruyère Hospital. In or about April 2005, the Montfort Hospital took over sponsorship of the Detox Centre from the Sisters of Charity Hospital. CUPE has been the bargaining agent of employees working at the Detox Centre for the majority of its thirty year existence. There is no dispute that labour relations of the Detox Centre fell under the jurisdiction of HLDAA prior to the transfer to MRI.

18. According to Ms. Tardivel, Montfort Hospital decided to have MRI take responsibility for managing the program since it was not part of that hospital's mission to offer a service

perceived to be a community service. As a consequence, Montfort Hospital and MRI entered into an Agreement for Services pursuant to which Montfort Hospital subcontracted the day-to-day management of, and clinical services relating to, the detoxification program to MRI. Montfort Hospital has however provided a payroll service for employees of MRI working at the Detox Centre in order to facilitate the transfer of the management of the service to MRI. The Vice-President of the Montfort Hospital has also been involved in the management of MRI to the extent that that individual is a representative on an advisory committee for the Detox Centre. That advisory committee has fifteen committee members representing the entirety of the Ottawa community in the detox field.

19. It is a condition imposed by the Ministry of Health that the funding it provides for the Detox Centre be provided to Montfort Hospital as sponsor of the centre and that the Montfort Hospital have ultimate responsibility for the program to ensure that Ministry standards, guidelines and legal requirements are followed by MRI. The necessary funding for the Detox Centre is, in turn, provided by Montfort Hospital to MRI.

20. The Detox Centre is currently what is known as a "Level 1" detoxification centre. MRI has however applied to have the Detox Centre designated at "Level 2". Both of these levels of withdrawal management services involve monitoring of resident symptoms by non-medically trained staff. A Level 2 designation would enable the centre to accept residents using methadone and those being tapered from benzodiazepine or from narcotics. At Level 2, workers could also give certain medicines to residents, such as blood pressure medicine. In anticipation of obtaining a Level 2 designation, management of the Detox Centre developed and distributed new policies and procedures to the addiction crisis workers ("Addiction Workers") employed at the centre for comment. While there was some confusion among the staff about whether those new policies were already in effect, Ms. Tardivel's evidence was that those policies are anticipated to come into effect only if and when the centre obtains a Level 2 designation.

21. The budget for the detox program, like that for MRI's mental health and housing program, was $1.2 million for 2005-2006 and is also funded by the provincial government. However, attainment of a Level 2 designation would require additional funding for training. Approximately forty to fifty per cent of the funding for the detox program is allocated to employee salaries and thirty to forty percent is allocated for rent, and for the needs of the residents such as food and cleaning. The remaining ten to twenty percent is for exceptional circumstances.

22. In contrast to MRI's mental health and housing program, all those who work for the Detox Centre are employed directly by MRI. There are approximately twenty-one Addiction Workers employed by MRI who are represented by CUPE. Of this number, six are full-time, nine are part-time and three are occasional workers. There are also three individuals employed on contract: one who works full-time and two who work part-time. The full-time employees work thirty-seven and a half (37.5) hours per week whereas the part-time workers are guaranteed sixteen hours per pay period. The occasional workers have no guarantee of hours. Apart from the unionized employees, MRI also employs one manager and one supervisor at the Detox Centre and a part-time administrative assistant. Because the Detox Centre is a twenty-four hour operation and there is only one manager and one supervisor, there are times when there is no supervisor at the centre to supervise the staff.

23. At the time that MRI took over responsibility for the Detox Centre in April 2005, CUPE represented the unionized employees at the Centre as part of a larger "all employee" bargaining unit of the Sisters of Charity Hospital. MRI and CUPE thereafter negotiated a new bargaining unit description consisting of employees of MRI working at the Detox Centre with certain common exceptions such as for supervisors. MRI agreed at the time of the transfer of responsibility to become, and subsequently did become, a member of the Ontario Hospital Association in order to allow it to become a participating employer in the Hospitals of Ontario Pension Plan ("HOOPP"). This was done to permit the employees of the Detox Centre to continue to participate in the same pension plan that they had participated in when employed by the Sisters of Charity Hospital. It is a condition of participating in HOOPP that an employer is a member of the Ontario Hospital Association, but not necessarily that it be a hospital. In its application to become a member of the Ontario Hospital Association, MRI describes its operations as offering or giving "health care services in the mental health network through some of its programs: intensive case management, central access point, homelessness, detoxification, supportive housing." MRI has since been accepted as a member of the association and has been accepted to participate in HOOPP as a not for profit organization.

24. The evidence concerning the bargaining regime of other detoxification centres in Ontario comes from Mr. Bézaire, who made inquiries of CUPE's health care coordinator and reviewed with her the list of detox centres listed on the Ministry of Health's website. CUPE's health care coordinator was able to confirm that all of the detox centres listed there for whom CUPE holds bargaining rights operate under the HLDAA regime. Mr. Bézaire also made inquiries of representatives of other trade unions that hold bargaining rights with respect to the detoxification centres listed and was informed that each of those centres was covered by HLDAA, with the exception of one detox centre about which there was some confusion regarding whether it was even unionized. The Ministry of Health listing of detox centres was prepared in July 2006 and lists Level 2 treatment centres, but also includes MRI, which had applied for, but had not yet obtained a Level 2 designation.

(i) Duties of Addiction Workers and Operation of the Detox Centre

25. Addiction Workers work in shifts to ensure twenty-four hour coverage of the centre. The day shift runs from 8 a.m. to 4 p.m.; the afternoon shift runs from 4 p.m. to 12 a.m.; and the night shift runs from 12 a.m. to 8 a.m. Generally speaking, Addiction Workers are responsible for admitting and discharging residents to and from the centre, observing the residents during the detox period, and documenting their observations of the residents in a daily log. Addiction Workers also organize referrals to various treatment centres for the residents and communicate with the residents regarding their treatment plan for detoxification and treatment for addiction. The treatment plan is one that residents can continue to follow after their discharge. There are also certain counselling meetings, such as Alcoholics Anonymous and Narcotics Anonymous meetings, held at the centre itself. These meetings are not conducted by the Addiction Workers, but rather are conducted by counselling staff from different organizations.

26. All of the Addiction Workers perform essentially the same functions. Each are assigned a set number of residents for whom they are responsible on each shift. There are three Addiction Workers who work during the day shift.

27. The Detox Centre occupies the first and second floor of a building. The entrance where residents are admitted is at the back of the building. There are two offices on the main floor and three observation rooms, which are near the offices and separated from the rest of the unit. On the first floor, there is also a kitchen with a dining area where residents eat their meals and a combined men's and women's lounge and television room. The second floor is the location of the men's dorm area and women's dorm area as well as the location of the men's and women's television rooms.

28. There are a number of cameras in the unit, including in the hallway of the men's dorm, in the hallway of the women's dorm, in the men's and women's television rooms, in the observation rooms, on the deck or patio area and at the back door, in the lounge and in the kitchen. There is also a monitor in the main office which switches from sequence to sequence of the views from these different cameras. Addiction Workers also carry walkie talkies in order to be able to communicate with each other quickly and easily within the unit. There is also an intercom system that residents use to get the attention of the Addiction Workers. These communication devices can be used to communicate with an Addiction Worker located in the main office in the event of a medical emergency or in the event of a behavioural problem with a resident so that the assistance of paramedics or of the police can be sought.

29. Typically, on arrival at the centre, a prospective resident will ring the bell of the centre and an Addiction Worker will answer and will ask the prospective resident a number of questions including whether they have previously been admitted to the centre. The worker takes down all relevant information and records it in a resident file and is also required to fill out certain information in a form provided by the Ministry of Health for statistical purposes. The admission and documentation process takes approximately ten to fifteen minutes to complete if it is the first time the resident has been admitted and less time otherwise. The Addiction Worker will also do a physical search of the resident and his or her belongings.

30. At the time of admission, any medication brought to the centre by the resident is recorded and kept in the main office in a cabinet that can be locked with a key. If the medication in question is not one that is permitted at the centre, the medication will be taken to the pharmacy and destroyed. If the medication is permitted, then residents may take their medication during their stay at the centre by having an Addiction Worker access it for them in the cabinet. The Addiction Worker then takes the medication out of the cabinet, gives it to the resident, and watches him or her take it and then documents what the resident has taken. There are instances, such as in cases of residents who are diabetics, where the worker has to remind the resident to take his or her medication.

31. Following admission, the resident is brought to an observation room where he or she must remain for a minimum of four hours during the withdrawal process. The time spent in observation can however be longer if, for example, the resident has a history of seizures or if withdrawal is not complete. Observation can last for as long as three days, such as in instances of heavy alcohol withdrawal. The first objective of an Addiction Worker when a resident is in the observation room is to ensure the resident's safety.

32. The Addiction Workers must do rounds and check on residents in the observation room every half hour. This is a visual observation in which the worker checks to ensure that the resident is still breathing. The worker will also make other observations such as whether the

resident is sick or is having hallucinations and will document those observations. Addiction Workers also do rounds observing the residents in the rest of the unit every hour throughout the course of the day and every half hour at night. The purpose of these observations is to ensure that the residents are breathing, that they are otherwise safe, and that they are not enticed by other residents to take any alcohol or drugs or to leave the premises to do so. If a resident is sick, an Addiction Worker will generally ask them questions to assess their condition and will document it so that the next shift of workers is aware of what has occurred. Observations during the rounds are documented by the Addiction Workers. They also have meetings once a day to share information.

33. Once an Addiction Worker assesses that a resident is ready to leave the observation room, he or she will give the resident a pair of pyjamas and a towel and will assign them a bed upstairs. Addiction Workers supervise to ensure that the resident takes a shower, but do not assist with the showering process. Residents are also expected to do their own laundry when they are able enough to do it and the Addiction Worker generally simply gives them the soap necessary to do their laundry. After residents are assigned a bed upstairs, they are free to spend time in the rest of the unit and can watch television, go to the patio to smoke, watch a movie etc. They are also given the option to attend the Alcoholics Anonymous and Narcotics Anonymous meetings held on site by representatives of outside agencies.

34. Food for the residents comes from the general hospital. Addiction Workers only prepare breakfast for the residents, heat up soup for lunch, and otherwise distribute the food to the residents by putting it on their plates. The Addiction Workers announce that the food is ready over the intercom system and residents then come to the kitchen to eat their meal. According to policy, if a resident refuses to eat for a period of forty-eight hours, Addiction Workers are required to refer them to the hospital.

35. According to Ms. Tardivel and Mr. Lahai, the average length of stay of a resident at the centre is from three to five days. Ms. Demetre however indicated that the average length of stay is from three to seven days as is also indicated in the policy manual under resident care. It is, in any event, agreed that a resident's length of stay can vary for a variety of reasons including continued withdrawal or the need for additional time to finalize the referral process.

36. In the event of an emergency of a medical nature (such as convulsions or seizures, difficulty breathing, chest pains etc.), residents are sent to the hospital emergency and will be discharged by the Addiction Worker, except that a bed will generally be kept available for a period of eight hours in the event the resident returns to the centre after treatment at the hospital. Addiction Workers must also at times call the police in the event that a resident becomes violent. Addiction Workers will perform basic first aid and CPR if necessary. In the event of a seizure, the worker will put the resident in the recovery position and ensure that they are safe by ascertaining that there is nothing on which the resident can injure themself. If the resident has gotten hurt, the Addiction Worker will attempt to stop the bleeding. Addiction Workers will also relay information concerning their observations of the residents or symptoms reported by them to the paramedics or to the hospital where the resident is referred.

37. When residents are sufficiently detoxified, Addiction Workers are responsible for speaking to them about their plans for the future and, in particular, whether they are interested in looking at treatment options. If a resident is interested, the Addiction Workers make a treatment

plan for him or her. They start the referral process by making the necessary telephone calls, filling out the necessary forms, and arranging for interviews for the resident with particular treatment centres. Much of the contact with different treatment centres must be done by the day staff members who work during business hours. Addiction Workers will also provide residents with assistance they need with problems associated with their substance abuse, such as child care, housing or work-related problems by helping to find the resources necessary to assist them with any of those problems. Addiction Workers also set a discharge date and are responsible for discharging the resident, including doing all of the paperwork required upon discharge.

38. The duties and responsibilities of Addiction Workers employed at the Detox Centre are summarized in MRI's job description for that position effective September 1, 2005. According to Mr. Lahai, "the requirement to employ observational skills to detect early signs of social, emotional or physical deterioration of residents" referred to under the heading "Duties and Responsibilities" might include observing individuals who are ill or are having hallucinations. In addition, this observation might include seeing if a resident wants to talk, because that individual may have lost everything including access to his or her children. In order to evaluate residents, Addiction Workers ask them open ended questions to extract information from them and then usually make decisions as a team regarding how to intervene. Mr. Lahai also explained that the type of general maintenance that might be required and which is contemplated in the job description could include cleaning up after residents who are ill and unable to make it to the bathroom.

39. Although the job description for Addiction Workers contemplates that the incumbent will have a Bachelor of Arts in a related field or a Social Services Worker Diploma, not all employees currently employed at the Detox Centre meet that criterion. While many have a B.A. and some are working on a master's degree, others have no post-secondary education at all and have correctional services diplomas and/or certificates in addiction. Addiction Workers are not counsellors and therefore do not need counselling skills, but instead require intervention skills to intervene when a resident is in crisis.

Alternatives in the event of a strike

40. According to Ms. Tardivel, in the event of a strike of employees working at the Detox Centre, the centre would have to close down as it could not function without the Addiction Workers. The evidence indicates that alternatives to the Detox Centre in that event would be prolonged stays in hospital emergency wards or jail, which would require the police to arrest people for being intoxicated and formally charge them. In Ms. Taylor's experience, both the police and hospital staff are reluctant to assist many of the residents who are homeless and would otherwise go to the Detox Centre for detoxification. She testified that she would never refer an individual to the hospital for detoxification but rather would do so in the event of a specific medical issue, as she believes the hospital staff would not think it appropriate to go to the emergency room for detoxification. The alternatives would then be for a resident to go back on the street and possibly end up in drop-in centres for the homeless. However, if the individual was disruptive, the police would be called.

41. Residents of the Detox Centre could also stay at one shelter called Shepherds of Good Hope, which is the only shelter in the area that will accept people under the influence of drugs and/or alcohol. It only has a few beds reserved for such individuals. According to Ms. Taylor,

the Shepherds of Good Hope would not be appropriate for everyone as it is a "rough and tough" place and the shelter system could not accommodate people under the influence of alcohol and/or drugs. In the past, there have been deaths associated with allowing people under the influence to go to bed. Ms. Taylor was aware of one individual who died when he aspirated his own vomit and another individual who had a seizure and cardiac arrest. He also died. At the shelters, staff members do rounds at night, but residents are not permitted to remain in bed during the day and staff do not have the capacity to monitor those who do.

Decision

42. The question referred to the Board for determination is whether MRI is a "hospital" within the meaning of HLDAA. As noted above, the term "hospital" is defined in HLDAA as follows:

> "hospital" means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain and includes a home for the aged;

43. In the present case, the union takes the position that MRI is an "other institution operated for the observation, care or treatment of persons who suffer from physical or mental illness". In this regard, the union refers in particular to the Detox Centre where the majority of the employees of MRI work. It takes the position that the centre is operated for the observation, care and treatment of individuals who suffer from drug and alcohol addiction, many of whom also suffer from mental illness. It notes that these are precisely the types of vulnerable persons that HLDAA was enacted to protect from the withdrawal of services in the event of a strike or lock out. As such, the union submits that it is irrelevant whether the other programs operated by MRI, which in any event employ only a few individuals, also meet the statutory definition.

44. MRI, for its part, disputes that the Detox Centre or MRI when considered as a whole meets the statutory definition of a "hospital" under HLDAA. MRI takes the position that neither the Detox Centre, nor MRI when considered as a whole, is "an institution" "operated for the observation, care or treatment of" such persons within the meaning of HLDAA. While MRI concedes that the Addiction Workers of the Detox Centre could be said to do some observation, it submits that it is not "observation" within the meaning of the legislation and also that they do not provide care or treatment. Treatment is arranged for by the Addiction Workers, but is not performed by the Addiction Workers employed by MRI. MRI further submits that, even if the Detox Centre when considered on its own, could be said to meet the statutory definition of a "hospital", the question before the Board is whether MRI meets that definition and that the answer to that question is, in any event, "no" when considering the totality of MRI's operations which include its other programs.

45. In view of the positions taken by the parties, the Board will start its analysis by considering whether the Detox Centre as operated by MRI outside of its former hospital setting still meets the criteria contemplated under the definition of "hospital" and, if so, whether MRI

when considered as a whole including the operation of its other programs remains properly characterized as a "hospital" within the meaning of HLDAA.

Whether the Detox Centre as operated by MRI meets the Relevant Criteria

46. It is common ground that the definition of "hospital" in HLDAA must be interpreted in light of its purpose. It represents an exception to the general rule that collective bargaining objectives are to be met by resort to the economic sanctions of a strike or lock out. In *Service Employees International Union, Local 204 (A.F.L. C.I.O., C.L.C.)*, [1995] OLRB Rep. May 612, the Board reviewed the purpose of the legislation, as follows:

> 12. We begin our analysis with a reference to the purpose of HLDAA, and a review of the case law. In *Extendicare Diagnostic Services Ltd., supra,* the Board stated:
>
> > 12. The Board has never before been faced with a dispute as to whether an individual is a "hospital employee" within the meaning of the *Hospital Labour Disputes Arbitration Act.* In order to make this determination we must look to the language of the definition read in the context of a statute whose overriding purpose is to prohibit work stoppages occasioned by labour disputes. The legislature has determined that the need of the public to uninterrupted hospital services takes precedence over the right of certain individuals to resort to economic sanctions in support of collective bargaining objectives. It is against this backdrop that effect must be given to the definition of who is a hospital employee. This is not to say, however, given the statutory encroachment upon individual freedoms, that the Board should not be circumspect in applying the definition.
>
> The Board went on to note that the statutory definition of a "hospital" focuses "not on the identity of the employer, but on the function performed by those whose services are so important to society as to abridge their right to free collective bargaining." The Board continued:
>
> > 14. ...Because it is a person's function which is determinative of whether that person is a "hospital employee" and because a number of different types of institutions are covered by the definition of "hospital" contained in the *Hospital Labour Disputes Arbitration Act,* we accept that when determining if a person is a "hospital employee" reference should be had to the type of institution within which or to which that person provides a service or performs a function and to the statute which specifies the services which that institution is required to provide. At the least, it is the uninterrupted delivery of these services which the *Hospital Labour Disputes Arbitration Act* is designed to ensure.

Similarly, in *Ottawa Valley Autistic Homes,* [1997] O.L.R.D. No. 1792; Board File No. 4213-96-U (May 9, 1997), the Board adopted the following purposive approach to the interpretation of the statute:

> 15. In numerous earlier decisions, the Board, the Minister of Labour, and the Divisional Court, have adopted what is described as a "purposive" approach to the interpretation of the definition of hospital in HLDAA. In that context,

> there has generally been consensus on the central purpose of this legislation: as noted in *Dignicare*, [1991] O.J. No. 180, "(t)he Act is intended to protect those who may not adequately be able to protect themselves if services provided by the Lodge were unavailable. If the health and safety of residents is dependent on services offered by the Lodge, their health and safety could be jeopardized by a strike or lockout."

As such, in considering whether MRI meets the definition of "hospital" in HLDAA, the Board must have regard to the purpose of HLDAA, which is to ensure uninterrupted delivery of services to those vulnerable persons whose health and safety could be jeopardized if those services were unavailable because of a strike or lockout. As noted by the Board in *Service Employees International Union, Local 204 (A.F.L. C.I.O., C.L.C.)*, cited above at paragraph 20, a measure of care needs to be applied when applying the definition "[g]iven that free collective bargaining, backed-up by the right to strike or lock-out, is the norm in our collective bargaining system, and the imposition of terms and conditions of employment by a third party is the exception".

47. In the present case, there can be no doubt, nor was it seriously disputed, that persons whom MRI serves in all three of its programs are persons who suffer from physical or mental illness. In the mental health and housing program, residents must have been diagnosed with a mental health problem by a doctor in order to be housed in the program. Similarly, the Accès Guichet program, while not in any event yet in operation, also serves residents requiring mental health services or services related to addiction. In addition, the residents served in the Detox Centre include alcoholics and drug addicts, a category of persons commonly recognized as suffering from a physical and/or mental illness. The evidence further indicates that a number of those individuals admitted to the centre in a state of intoxication or withdrawal from alcohol and/or drugs also suffer from mental health problems.

48. MRI highlighted the fact that the Addiction Workers working in the Detox Centre did not provide services that could be characterized as medical in nature and did not have any medical training, or even in some cases any post-secondary education. The Divisional Court in *Dignicare Incorporated c.o.b. as Orleans Community Health Centre*, [1991] O.J. No. 180, (Divisional Court, File No. 462/90, February 12, 1991) has however made clear that the observation, care or treatment contemplated under the legislation need not be medical in nature for the exception to apply. In *Therapeutic and Educational Living Centres Inc., supra*, the Board explained this finding, as follows:

> 16. The Divisional Court has clarified that the observation, care and/or treatment of residents in an institution does not have to be medical in nature in order to fall within the HLDAA definition. In CUPE, Local 2592 v. Dignicare, supra, the Divisional Court in overturning a decision of two Ministers of Labour held as follows:
>
> > The Ministry of Labour erred in law when they determined that an institution must be providing "medical care or treatment to its residents" (July 21st decision), or "care, observation or treatment of a medical nature" to its residents (December 8th decision) in order for the institution to be a "hospital" as defined by the Act.
> >
> > In light of the use of words, "observation, care or treatment" in the statute, the Ministers erred in determining that an institution would fall

> within the definition of "hospital" in the Act only if the care, observation or treatment provided by the institution was of a medical nature and only if the institution was similar in nature to a hospital, sanatorium, sanatorium, or nursing home.
>
> 17. Following the *Dignicare* decision, the Board has held that the provision of observation, care and treatment which is directed to the activities of daily living and to behavioural modification and intervention may result in a HLDAA designation. However, in order for non-medical observation, care or treatment to bring the institution within the definition of "hospital", it must be so fundamental to the maintenance of the residents' health, safety and well-being that should they be deprived of the services of their primary care-givers as a result of a strike or lockout, their condition would be jeopardized (*Surex Community Services, supra,* at p. 1444).
>
> 18. In the cases involving persons with developmental and physical disabilities, the ability of residents to direct their own care has often been emphasized by the employer. The Board has determined that such evidence of independence, while obviously important to residents, is not significant in determining whether or not the care being provided falls within the HLDAA definition, other than the extent to which the degree of independence demonstrated by residents impacts on the amount of care they require from others (*North Yorkers for Disabled Persons Inc., supra* at p. 1008).

While the observation and care provided need not be of a medical nature in order to fall within the statutory definition, non-medical observation and care must be so fundamental to the health and safety of the residents that these services ought to be maintained (See also *Bellwoods Centre for Community Living Inc.,* [1997] OLRB Rep. May/June 331 at para 60). As such, the fact that the services provided to residents of the Detox Centre are not of a medical nature and that residents must be both conscious and ambulatory to be admitted to the centre are not on their own determinative. Rather, they are factors to be considered when assessing the extent to which the residents are vulnerable in the event of a strike or lock-out and therefore whether the services provided should be construed as "observation, care or treatment" within the meaning of HLDAA.

49. When considering whether the definition of "hospital" has been met in a given case, the Board has had regard to a variety of factors relevant to the legislated purpose of the exception. They are listed in *Service Employees International Union, Local 204 (A.F.L., C.I.O., C.L.C.),* [1995] OLRB Rep. May 612 at paragraph 21, as follows:

> (i) the nature or kind of care provided by the institution in question;
>
> (ii) the degree or extent of the care;
>
> (iii) the extent to which the recipients depend upon the care for their continued health or safety;
>
> (iv) whether the institution is under a statutory obligation to provide the care;
>
> (v) whether the individuals providing the care are employees of the institution or a third party;

(vi) the location at which the care is provided;

(vii) the existence of alternatives to the provision of the care by the employees in question;

(viii) the historical practice of collective bargaining in the industry.

50. The care provided by the Addiction Workers involves assisting residents with daily routines by providing them with such necessities as soap, towels, linens, pyjamas. They prepare breakfast for them and serve them other meals provided to the centre by the hospital. For the most part, residents are expected to take the items provided and attend to their own needs when they are capable of doing so after an initial, more intensive, observation period. Addiction Workers counsel the residents concerning treatment options and make arrangements for treatment to be performed elsewhere.

51. The evidence indicates that Addiction Workers also provide both observation and care to residents of the centre which is essential to the maintenance of their health and safety during the withdrawal process. The program objectives for the detoxification centre as described in the centre's policies and procedures manual, in fact, refers to both observation and care. Objective 1 described in Policy E-2 reads, in part as follows:

Objective 1

To provide supervised and *residential care* on a short-term basis to chemically dependent persons during their detoxification.

To provide 24 hour service of *care and observation*.

Process:

The Detox will provide *observation, supportive care*, access to medical services as required and linkage to appropriate treatment and rehabilitative services.

...

The unit will develop and maintain a safe environment and should be able to provide *emergency resuscitation and first aid*, such as handling seizures and management of disruptive behaviour.

[emphasis added]

52. The fact that Addiction Workers engage in observation of the residents they look after is also apparent from their job descriptions which specifically list the requirement to employ "observational skills to detect early signs of social, emotional or physical deterioration of the residents and intervenes as per policy and procedures" and to document those observations. The evidence indicates that that observation includes seeing if a resident is ill or is having hallucinations or seizures, whether a resident is eating or taking his or her medication as prescribed or is suicidal. Regular rounds are done by the Addiction Workers, unlike in the shelters where rounds are done only at night.

53. The policy and procedures in effect and followed at the centre also make clear that the nature of the services provided by the Addiction Workers involves observation. For example, according to policy, Addiction Workers must record all medications ingested by residents and ex-residents in the Detox Centre (Policy B-24). The residents in the holding areas (or observation areas) must be checked every 30 minutes, 24 hours a day, to be sure they are breathing properly (Policy B-32). Residents are otherwise checked every hour from 7 a.m. to midnight and every half hour from midnight to 7 a.m. and during these rounds, the Addiction Worker observes each resident as per policy "to determine whether his/her physical/behavioral condition appears to be stable-progressive, or if there is an indication of a significant deteriorative change" (Policy B-2). Workers are also required to treat the resident as a medical emergency if he/she exhibits some or all of the symptoms of overdose, which include low respiration, prolonged semi-consciousness etc. Addiction Workers are also required "to monitor the resident throughout his/her stay for variations in the withdrawal pattern that indicate successive withdrawals" (Policy B-32).

54. The evidence reveals that an important function performed by these workers is to observe for signs of a medical and/or other emergency requiring medical attention or other intervention. According to Ms. Demetre, the Detox Centre has often had residents who have had difficulty breathing during their stay or chest pains and Addiction Workers have also dealt with residents with extreme withdrawal such as delirium tremens ("DTs") and hallucinations. She also noted that strong emotional and behavioural reactions are common and that there have been several suicide attempts at the centre. Addiction Workers are responsible for being alert for signs that intervention is required, seeking that intervention and providing whatever care they can provide (e.g. basic first aid) while awaiting further assistance. They also ensure the continued health and well-being of residents by acting as a liaison with paramedics and hospital emergency personnel and passing on critical information concerning the history of the resident, such as the medications that have been consumed by him or her etc. The evidence suggests that this is done to ensure the resident's health, safety and well-being during the withdrawal process and is something that the residents who are generally admitted in a state of crisis are unable to do for themselves as, for example, in cases of hallucinations or seizures, suicide attempts etc. The extent of care provided is round the clock care involving a more intensive period of observation during the initial withdrawal process.

55. Even though residents are generally required to do their own laundry when they are able to do so and are not given assistance with such aspects of daily living as showering, that is not on its own determinative of whether the observation and care provided by the Addiction Workers is so fundamental that it ought to be maintained. In the Board's view, the care provided by the Addiction Workers, albeit non-medical, involving being alert for signs that medical intervention is required and taking steps to obtain it when appropriate, is part of the spectrum of care necessary during the withdrawal process and without which the health, safety and well-being of residents would be jeopardized. Alternatives to the provision of care by the Addiction Workers, which are the police, a few shelter beds and hospital emergency wards, appears from the evidence to be unsatisfactory to assure the health and safety of residents.

56. It is further a legislative requirement that the detoxification centre be sponsored by a Schedule 1 hospital which has an emergency room. The hospital receives all funding for the program from the Ministry of Health directly and then transfers it to MRI. The hospital is ultimately responsible for the program and could decide to replace MRI as manager of the centre. While the evidence concerning the historical practice of collective bargaining in the industry is

inconclusive in that it relates only to Level 2 detoxification centres, both Level 1 and Level 2 centres provide non-medical care and it is difficult to see how accepting residents using methadone and those being tapered from benzodiazepine would significantly affect the characterization of the institution.

57. The care provided by the Addiction Workers, unlike that provided by the case managers in the mental health and housing program, is further provided by individuals who are employed directly by MRI. Their services are provided in the Detox Centre, which is an institutional setting, and the centre is "operated for the purpose" of providing that observation and care to residents during the withdrawal process.

58. The present situation is therefore distinguishable from that before the Board in both *Maison Mère des Soeurs de la Charité D'Ottawa,* [1995] OLRB Rep. July 978 and in *Sisters of St. Joseph for the Diocese of Toronto in Upper Canada at Morrow Park,* [1999] OLRB Rep. November/December 1101. In both of these cases, the responding parties were an order of nuns that provided observation, care and treatment to elderly residents in an infirmary. However, the purpose of the relationship between those receiving care and those giving it was not the provision of that care. In *Maison* Mère, cited above, the Board noted that the services were not only provided in a private residence, but the purpose of the responding party was to house members of a religious order. In *Sisters of St. Joseph,* cited above, the Board found that the relationship between the residents and the institution had to do with commitments focused on the work of the Order and not on the services of the infirmary. As a consequence, the Board in both cases found that the responding party was not the type of institution that the legislature intended to regulate as it was not "an institution *operated for* the observation, care or treatment of" vulnerable persons. In the present case, however, the reason for the relationship between the residents and MRI is the provision of the services of observation and care during the detoxification process. In all the circumstances, the Board is satisfied that the Detox Centre operated by MRI when considered on its own meets the statutory definition of hospital.

Whether MRI when considered as a whole meets the Statutory Definition

59. That does not however end the inquiry since, as counsel for MRI correctly points out, the question before the Board is whether MRI itself meets the statutory definition. It therefore remains to be considered whether MRI as a whole is "an other institution operated for the observation, care or treatment" of its clients and whether the operation of MRI's other programs changes its characterization.

60. MRI suggests that it does and in particular notes that the mental health and housing program operated by MRI currently accounts for the same amount of MRI's total budget as the detox program and that the budget for mental health and housing will soon increase by twelve percent such that it will account for a greater part of MRI's overall budget. Where an employer provides more than one service or function, assessing how closely its operations fit with the statutory definition will involve both a quantitative and a qualitative assessment. In *Maison Mère*, cited above, the Board at paragraph 29 explained as follows:

> The process of determination of how to categorize an institution with more than one function inevitably includes looking at what it does to see how closely it fits the definition. And this will usually have a quantitative as well as a qualitative aspect to it. We are not of the view that looking at the

> quantitative aspect of the facts amounts to importing criteria into the statutory definition that are not there. The quantitative aspect of activities is often very relevant to a more qualitative question. It may not be determinative, but it is at least a factor to be considered.

A quantitative assessment of the employer's activities is relevant to its characterization, but is not however determinative when considering the purpose of the statutory exception. (See for example, *Cheshire Home (Hastings-Prince Edward) Inc.*, [2001] OLRB Rep. January/February 36 (February 9, 2001).

61. In the case of MRI, the Accès Guichet program is not yet operational and is, in any event, a very small aspect of MRI's operations when considering both its budget and current staffing requirements. The mental health and housing program is however a significant function performed by MRI from both a budgetary standpoint and the number of clients served. However, the vast majority of the employees of MRI work in the detox program as opposed to in the mental health and housing program where services are provided by "partners" employed by third parties. When considering the purpose of HLDAA, which is to ensure uninterrupted delivery of services to vulnerable persons whose health and safety could be jeopardized in the event of a strike or lock out, this fact is of greater significance than the fact that the budget for the mental health and housing program is expected to surpass that of the detox program next year. Clients in the mental health and housing program are also vulnerable persons in that they suffer from mental illness and the evidence indicates that the withdrawal of the services offered to them in the program will affect them in the long term. The services offered to these clients are however less clearly "observation, care or treatment" within the meaning of HLDAA when considering the extent to which clients housed in the program are dependent on those services for their health and safety.

62. The jurisprudence, in any event, recognizes the possibility of over-inclusion. The definition that the legislature chose is one which provides an exception to free collective bargaining by reference to the institution where the persons who perform those services work. It does not exempt particular employees or services. The Board in *Ottawa Carleton Association for Persons with Developmental Disabilities*, [2000] OLRB Rep. March/April 304 (March 28, 2000) considered the implications of this choice as follows:

> 199. Given that the goal of the legislation is to protect vulnerable persons from the adverse affects of work stoppages, it is difficult to countenance a solution to a challenge like the one presented by the facts in this case which would exclude from the protection of the statute persons who, in the words of the then-Minister quoted above, are exactly the type of persons which the HLDAA seeks to protect. To put it simply, if the choices are either to include or exclude ALL the developmentally disabled persons served by the OCAPDD, regardless of the level of care they require, the protective nature of the statute suggests that inclusion is the only choice.
>
> 200. That the legislature must have countenanced the possibility of such "over-inclusion" is apparent with reference to other provisions of the HLDAA, including the specific inclusion of laundries and stationary power plants serving hospitals, and of course the use of the term "hospital" itself. Large public hospitals operate a large number and variety of programs, many of which may not entail the provision of observation, care and treatment to

> patients, or to patients who would necessarily be considered to require protection, yet they are swept into a scheme of compulsory binding arbitration by definition. And as discussed at the start of this decision, the scheme of the HLDAA is to designate institutions, rather than particular employees or services, as appropriate for removal from the norm of free collective bargaining.

The result of this choice is that programs which are not operated for the observation, care and treatment of vulnerable persons may be included. While the Board must be cautious in applying the definition of "hospital" when weighing the private and institutional interests in free collective bargaining against the public interest in the continued provision of services to vulnerable persons, it must also recognize the possibility of over inclusion where the necessary pre-conditions have been met in respect of certain, but not all, programs operated by the institution in question.

63. In the present case, the majority of the employees of MRI work in the detox program which provides observation and care to vulnerable persons whose health and safety could be jeopardized in the event of a strike or a lock-out. MRI also employs some additional workers including managers, administrative staff and a cleaner in other programs which do not fit the statutory definition as clearly. In all the circumstances of this case, and having regard to the fact that the statutory scheme contemplates the possibility of over-inclusion, the Board is satisfied that Montfort Renaissance Inc. when considered as a whole is properly characterized as an "other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness" within the meaning of HLDAA.

Disposition

64. It is the Board's advice to the Minister that Montfort Renaissance Inc. is a "hospital" within the meaning of the *Hospital Labour Disputes Arbitration Act*.

1456-06-G Ontario Power Generation Inc., Applicant v. International Association of Machinists and Aerospace Workers, Responding Party

Construction Industry Grievance – Trade Union – In this referral of a grievance filed by OPG concerning the entitlement of former employees to severance payments, the Board addressed the preliminary question whether it had the jurisdiction to hear the grievance, given the Machinists' position that it was not a construction industry trade union – The Board, following *Ontario Hydro*, held that "a history of representing construction employees separate and apart from other employees" must be established for a union to be a construction industry union, and the various union practices relevant in establishing such a history were that a construction trade union usually operates: a hiring hall, an out-of-work list, health, welfare, pension or other benefit plans, either jointly with employers or alone, and a training or apprenticeship program – The Board considered it significant that the members at OPG had exactly the same status within the union as all of the other clearly non-construction members, and had never sought separate status, rights, or representation – There was also no evidence of the Machinists ever having bargained their agreements with OPG or Ontario Hydro together with any building trade unions or as part of a council

of such unions, but rather there was direct evidence that the Machinists had always bargained their agreements alone – Although the Machinists/OPG collective agreement did contain certain provisions which were far more common within construction as opposed to non-construction collective agreements, the actual practices of the Machinists were far more in keeping with those of a non-construction union – Ultimately the Board stated that the trade union definition in s. 126, and specifically the words 'pertains to,' should be given a restrictive interpretation in order to accomplish the separation in the Act between construction and non-construction – The Board held that the Machinists were not a construction trade union, and therefore the Board had no jurisdiction to determine this grievance – Grievance dismissed

BEFORE: *Mark J. Lewis*, Vice-Chair.

APPEARANCES: *M. Patrick Moran, Max Jackson* and *Phil Schofield* appearing for the applicant; *James Robbins, Amar Bhatia, Patrick Murphy, Dave Smith* and *Ches Tulk* appearing for the responding party.

DECISION OF THE BOARD; October 4, 2007

1. This is the referral of a grievance to arbitration before the Board pursuant to section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The grievance which is the subject of this referral was filed by the union, International Association of Machinists and Aerospace Workers (the "Machinists") with the employer, Ontario Power Generation Inc. ("OPG"), on February 14th, 2006. However, it was OPG, and not the Machinists, that referred this grievance to the Board for arbitration on August 11th, 2006.

2. The collective agreement under which the grievance was filed covers certain machinists (broadly defined) and auto and diesel mechanics employed by OPG. The grievance itself concerns the entitlement of former employees of OPG in this bargaining unit, working at both the Pickering and Darlington Nuclear Generating Stations, to severance payments following their lay-off. This decision, however, does not deal with the merits of the grievance but relates solely to the preliminary question of the Board's jurisdiction to determine this grievance as a board of arbitration pursuant to section 133 of the Act. OPG takes the position that the Board has jurisdiction to hear this grievance while the Machinists argue that the Board does not.

The Board's Jurisdiction Under Section 133

3. The Board's jurisdiction to act as a board of arbitration for construction industry grievances is established by section 133 of the Act. Subsection 133(1) states the following:

> **133.** (1) Despite the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 48, a party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination.

4. The terms employer and trade union as used within section 133 of the Act are defined by subsection 126(1);

> **126.** (1) In this section and in sections 126.1 to 168,
>
> "employer" means a person other than a non-construction employer who operates a business in the construction industry, and for purposes of an application for accreditation means an employer other than a non-construction employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas or sectors or parts thereof;
>
> "trade union" means a trade union that according to established trade union practice pertains to the construction industry.

5. Therefore, not every grievance, even if it relates to construction work, can be referred to the Board under section 133 of the Act. Essentially the Board only has jurisdiction to hear a grievance if the parties to the collective agreement under which the grievance is filed are construction industry parties as defined by subsection 126(1).

6. Here there is no dispute that OPG is an employer within the definition set out in sub-section 126(1). The matter in dispute is whether the union, the Machinists, is a trade union within the meaning of section 126(1), that is; are the Machinists a union which according to established trade union practice pertain to the construction industry? OPG claims that they are such a union, while the Machinists themselves maintain that they are not and never have been a construction union. It is this issue, the status of the Machinists under section 126(1), which was the subject of the preliminary motion which this decision relates to.

7. This is an unusual case for a number of reasons. Firstly, the status of any particular union as a construction union is usually clear and there are relatively few cases which have analyzed union status under section 126(1) in any great detail. Secondly, in those cases where the issue has arisen, it has always been the union whose status is in dispute that has claimed to be a construction union. This is apparently the first time an employer has asserted that a union has status under section 126(1) while the union is resisting that assertion.

The Law

8. For the most part, in the Province of Ontario, the unions which enjoy construction union status do so as a result of their undisputed and undeniable histories and ongoing practices. Generally such unions have existed as unions representing employees in the construction industry separate and apart from other employees for many decades and, in the case of some unions, for more than a century. The number of such unions has largely remained fixed and it is hardly surprising therefore that there are relatively few cases which clearly annunciate the test which a union must meet to be found to be a construction union.

9. The decision in which the Board analyzed the question of union status under section 126(1) in the most detail is *Ontario Hydro*, [1997] OLRB Rep. Jan./Feb. 82, in which, amongst other claims, the Power Workers' Union asserted that it was a construction union. At paragraph

100 of that decision the Board summarizes the factors which previous Board decisions have considered in relation to this issue:

> 100. What is interesting, is that none of these decisions, or in any other Board decision of which I am aware, did the Board consider anything other than the trade union's constitution and whether it (or its parent union) had any collective bargaining history in the construction industry. More specifically, the Board did not consider whether a trade union could establish construction trade union status on the basis either that the trade union counted among its members employees who had regularly performed a substantial amount of construction work, or on the basis that it had a collective bargaining history with an employer or employers who are construction employers within the meaning of section 126. The first proposition has been the fundamental basis for the PWU's assertion that if it has to be it is in fact a construction trade union. The second, is a proposition which it appears the PWU raises for the first time in its reply submissions.

10. At paragraph 112, the Board sets out what must ultimately be established for a union to be found to be a construction union, namely that "a history of representing construction employees separate and apart from other employees". Thereafter, at paragraphs 117 and 120, the Board lists the various union practices which it finds to be relevant for establishing such a history:

> 117. What does a construction trade union look like? A construction trade union does not have to restrict itself to representing one or a few trades. Most non-building trades construction unions do not, and not even all building trades unions do so outside of the ICI sector. A construction trade union does not have to operate a hiring hall, although the vast majority do. A construction trade union doesn't have to operate an out-of-work list (i.e. a list of unemployed members who can be referred to employers who are obliged to hire unemployed members before they can hire "off the street") but there are few (if any) which don't (even Teamsters Local 91 in Ottawa which does not operate a hiring hall as such keeps an out-of-work list). A construction trade union does not have to operate health, welfare, pension or other benefits plans, either jointly with employers or alone, or operate a training or apprenticeship program, but most do. A construction trade union does not have to have or aspire to bargaining rights with more than one employer, but again, most do. Although a union does not HAVE to have any of these characteristics in order to be a construction trade union, the fact is that every construction trade union of which the Board is aware (both on the materials before the Board in this case, and as the expert tribunal in the field) has at least some of them. That is, these characteristics indicate the PRACTICES which have become established in the construction industry. The fewer of these characteristics that a trade union has, the less likely that it is a construction trade union. The PWU has NONE of them.
>
> 120. But most importantly, the one thing that a trade union absolutely must do in order to be a construction trade union, is represent at least one bargaining unit of construction employees; that is, a bargaining unit composed at least primarily of construction employees separate and apart from other employees. This the PWU has never done.

11. In all of its subsequent decisions in which it has addressed this issue, the Board has generally followed the principles set out in *Ontario Hydro* concerning section 126(1) status. Such decisions have included *United Brotherhood of Carpenters and Joiners of America Local 1072*, [1997] OLRB Rep. Sept./Oct. 942, *Brick and Allied Craft Union of Canada*, [2001] OLRB Rep. May/June 615, and most recently *PBS General Contractors Inc.*, Board File No. 3156-06-R, dated March 23, 2007.

Decision

The Basic Positions of the Parties

12. Both parties, and specifically OPG, agree that the Machinists have never previously been found to have status under section 126(1). Notwithstanding this, OPG takes the position that the specific labour relations relationship between it (and its predecessor Ontario Hydro) and the Machinists was sufficient to establish that the Machinists are a construction union. The Machinists vigorously dispute this claim. At its core the basis of OPG's claim is that its (and previously Hydro's) employees represented by the Machinists are, and always were, "construction workers" and that based on this bargaining unit the Machinists do in fact have a history of representing construction employees separate and apart from other employees. Therefore, it is asserted, the Machinists are a union pursuant to section 126(1) of the Act.

The Bargaining Unit

13. Article 1.2 of the collective agreement between these parties defines the bargaining unit as being comprised of

> 1.2 The bargaining unit under this Agreement shall comprise all Machinists, Machinist Welders, Machinist Millwright-Turbine Erectors, Equipment Repair Machinists, Drill Doctors, Conveyor Mechanics, Machinist Helpers, Machinist Apprentices and Auto and Diesel Mechanics and Auto and Diesel Mechanic Apprentices employed by the Generation Projects Division and the Lines and Stations Construction Department of the Transmission Systems Division of the Employer, excepting those described hereunder;
>
> (a) persons above the rank of subforeman;
>
> (b) employees whose headquarters and usual places of work are Head Office and the Ontario Power Generation (formerly part of Ontario Hydro) Service Centre;
>
> (c) field employees in the Generation Projects Division and the Lines and Stations Construction Department of the Transmission Systems Division who, at April 30, 1953, possessed full regular status.

14. The workers in this bargaining unit at one time apparently worked at various OPG/Hydro facilities across the province. Certainly the agreement has provisions in respect of facilities located at the Bruce, Nanticoke, Wesleyville, Sir Adam Beck and Lambton. However, at the time of the grievance workers in this bargaining unit were only employed at the Darlington

and Pickering Nuclear Generating Stations. A limited amount of very general evidence was called as to what these workers did. Based on this evidence it appears that the machinists were generally engaged in the production, repair and maintenance of specialized tools, equipment, and parts required for construction. The auto mechanics were engaged in servicing and maintaining the pick-up trucks used by other employees of OPG's/Hydro's construction division.

15. The evidence suggested that the majority of the machinists' work was performed in "machine shops" which, at the time of the grievance at least, were shops that they shared with members of the building trades. However, the machinists had their own areas within the shops. Some machines in these shops were used exclusively by the machinists while others were shared with members of the building trades. At both Darlington and Pickering the main shops were outside of the "protected areas" and as such were removed from the actual locations of the construction activities. From time to time at least, some of the machinists would have to perform work away from their main shops and at, or at least much closer to, the areas where actual construction was taking place. These occasions would include situations where precise field measurements were required or where the equipment which they were repairing and/or maintaining could not be brought back to their shop because of concerns about radiation. The evidence established that the machinists would not normally move the items they had worked on in their main shops to the precise locations where these items were required. Instead they would usually place them in "lay-down" areas in the shops and the items would thereafter be transported either by the trade that was going to use them or by members of the Teamsters or Operating Engineers unions.

16. The auto mechanics worked in garages. In previous years, at certain job sites, they may have had their own garages. More recently they have shared garages with mechanics who are represented by the PWU but the two groups apparently maintained their own areas within any such common garages. The vehicles that they worked on were not specialized construction vehicles but were simply pick-up trucks used by employees of the employer's construction division including members of management and the engineering staff.

This Bargaining Unit as a Bargaining Unit of Construction Employees

17. Both parties spent a considerable portion of their arguments addressing the question of whether or not OPG's machinists and auto mechanics represented by the Machinists were construction workers. This question (albeit with respect to the definitions provided in the *Employment Standards Act* as opposed to this Act) will in all likelihood have to be answered in dealing with the merits of this grievance. However, in these circumstances, and in respect of this preliminary decision, I find that it is not necessary to definitively answer it.

18. As is set out above, and as both parties argued, the Board clearly stated in *Ontario Hydro*, *supra*, that, irregardless of any of the other practices which a union may have, the one practice which it must have in order for it to be found to be a construction union is that it represents at least one bargaining unit which is composed primarily of construction employees separate and apart from other employees. However, neither in *Ontario Hydro*, nor in any of the decisions since, has the Board ever held the converse proposition to be true, namely that if a union represents one bargaining unit composed primarily of construction workers it is a construction union irregardless of its other practices. In fact, in *Ontario Hydro* and the decisions thereafter, the Board generally devotes just as much attention to the other practices which are

characteristic of construction unions as it does to the issue of whether there are any bargaining units comprised of construction workers. This is made clear in *United Brotherhood of Carpenters and Joiners of America Local 1072, supra,* in which the Board states the following at paragraphs 79 and 80:

> 79. Portions of this passage (particularly paragraph 120) suggest that unless a trade union represents at least one bargaining unit composed exclusively or primarily of construction employees, who bargain separately and apart from other employees, the organization cannot be a "construction trade union" for the purposes of section 126 of the Act. This criterion is advanced as an absolute prerequisite - a kind of litmus test which any true "construction union" must pass. If the disputed trade union does not have a history which includes this particular practice - representing at least one more or less "pure" construction bargaining unit - then the disputed organization cannot be a "trade union that according to established trade union practice pertains to the construction industry". And it does not matter that other established practices,- of that union, or other unions, or in the industry - may suggest a contrary conclusion.
>
> 80. However, it is evident from other portions of the decision in the *PWU case* that the Board also looked at *other* aspects of trade union practice, and *other* characteristics of construction unions with which the practice and character of the PWU were compared. While the Board asserted that there is one indispensable condition for an organization to be a "construction trade union" (that it represent at least one "pure construction" bargaining unit), the Board went on to examine a number of other areas where the PWU's organization or practice were also found wanting

19. Further, in *Bricklayers and Allied Craft Union of Canada, supra,* while ultimately finding that a construction agreement existed, the Board even hinted that, in the right circumstances, the other practices might be so telling that it might not be necessary for a union to have a collective agreement in its own name in order to obtain construction union status. Specifically, in *PBS General Contractors, supra,* the Board stated the following at paragraph 17:

> 17. ... In *Brick and Allied Craft Workers Union,* [2001] OLRB Rep. May/June 615, the Board found that the BACU was a trade union as defined in section 126 since, out of a large number of collective agreements, one of them was clearly binding on the BACU and its local unions. However, at paragraphs 101-105, the Board suggested that given the circumstances of that union, a finding of one "construction industry" collective agreement clearly in the name of the BACU might not have been necessary to establish that practice.

20. In the case of a new union, such as the CCWU dealt with by the Board in the *PBS General Contractors,* its history will be short and as such there may not be many other actual practices to assess. In such situations having at least one construction collective agreement will have increased significance, but that is very much not the case with the Machinists which have long been "a known entity" as a union. Further, it is certainly not "by accident" that the Board has seen fit to assess both a series of significant, although not absolutely necessary, practices along with the one necessary practice in determining construction union status. Under this Act construction unions are distinct from other unions and the Board's decisions all indicate that this

distinction is not based solely on the fact that they represent a single bargaining unit of construction workers. Accordingly, assuming but without determining that the Machinists' bargaining unit at OPG is a bargaining unit composed primarily of construction workers separate and apart from other employees, I am still not prepared to conclude that the Machinists are a construction union within the meaning of the Act based on their other practices.

The Practices of the Machinists in General

21. The Machinists represent hundreds of bargaining units across this province other than this one particular unit at OPG and the number of OPG employees that were their members at the time of the grievance was only a tiny fraction of the Machinists' overall Ontario membership. Based on the uncontested evidence led, and the complete lack of any contrary evidence, concerning their practices with respect to all of those other bargaining units and other members, it is readily apparent that the Machinists, outside of the OPG context, do not "look like a construction trade union". In fact, the Machinists generally exhibit none of the practices which the Board has found to be characteristic of construction unions.

22. The trade of machinist has never been considered one of the group trades which have historically been regarded as comprising the construction or building trades. In any event, the Machinists as a union in Ontario do not restrict themselves to this, or any other particular, trade. To the contrary, their structure and practices are characteristic of "industrial unionism" in that they generally seek to represent "all employee" units. Further, even where this is not the case, the Board has previously specifically found, and relied on the fact, that the Machinists are not a "craft" union (see *Toronto Transit Commission*, [1997] OLRD No. 285, OLRB File No. 0876-96-JD). Finally, the Machinists took the position that, leaving aside the collective agreement with OPG the characterization of which is in dispute, they are not party to any construction collective agreements and no additional collective agreements were introduced into evidence to counter this claim.

23. The Machinists in Ontario do not operate a hiring hall. Further, they do not have what can be regarded as an out of work list. Finally, outside of the OPG context (which is dealt with below), they do not refer and/or even clear their members to work.

24. The Machinists do not operate health, welfare, pension and other benefit plans either alone or jointly with employers.

25. In this hearing there was no evidence led to establish that the Machinists operate any sort of apprenticeship or skills training programmes.

26. The Machinists, and their Grand and Local Lodges, do have bargaining rights with more than one employer. However, with the possible exception of some joint bargaining with a small group of automotive dealerships in and around North Bay which quite clearly does not relate to the construction industry, this union does not enter into industry wide standard collective agreements with employer associations as is characteristic of bargaining patterns in the construction industry.

27. Finally, their history as a union is clear. The Machinists began as a union of skilled metal workers, primarily in the railway industry in the southern United States and thereafter

expanded to become an industrial union representing various workers primarily in manufacturing and transportation. Accordingly, and as the Board noted could be a relevant criteria to be considered in *Bricklayers and Allied Crafts Union of Canada, supra*, the origins of the Machinists as a union do not relate to the construction industry.

28. In addition, there is simply no evidence of the Machinists ever having claimed, sought or even acted as if, they had status as a construction union under the Act. In particular, there is no evidence of this union ever having filed an application for certification under the construction industry provisions of the Act; having sought conciliation and/or mediation as a construction union, and/or; ever having referred a grievance to arbitration pursuant to the provisions of section 133 of the Act.

29. Accordingly, outside of their relationship with OPG/Hydro, which at the time of the grievance consisted of a single collective agreement covering a handful of employees, there is absolutely no evidence to establish that, based on their practices, the Machinists "have any history of representing construction employees separate and apart from other employees."

The Machinists and OPG/Ontario Hydro

30. There are clearly elements of the Machinists relationship with OPG that are unique from those that they have with other employers. However, based on the evidence before me I am unable to conclude that, to the extent that any unique union practices have resulted for this one particular bargaining unit, they are sufficient to establish that the Machinist are a construction union.

31. Assuming that their members employed by OPG are construction workers, which would certainly make them a distinct and tiny minority amongst the union's general membership, there is no evidence that these members have any sort of separate status, rights or representation internally within the union. The Machinists' constitution was not put into evidence and there was no argument put forward that the Machinists had ever even tried to establish a separate construction division within the union, a practice that the Board addressed in both *Ontario Hydro* and *United Brotherhood of Carpenters and Joiners of America Local 1072*. The uncontested evidence which was before the Board established that the members at OPG had exactly the same status within the union as all of the other, clearly non-construction, members. In fact the members working at OPG did not even have their own separate Local Lodge (i.e. local union) but are rather part of Local Lodge 1120 the other members of which apparently work in various industrial plants.

32. Obviously the Machinists' bargaining unit with OPG, that covers machinists and auto mechanics across the province, is not a standard industrial bargaining unit covering all employees of an employer in a particular municipality. However this fact, in isolation, is simply insufficient to establish that the Machinists follow construction industry practices. The PWU's unit also covers the province and the Board still concluded that they had not adopted the practices of construction unions. Similarly, even if it is assumed that these particular machinists and auto mechanics are, because of their unique circumstances, construction workers, it can not be said that the Machinists as a union have established a practice of entering into collective agreements containing standard construction industry bargaining unit descriptions. As noted earlier, neither machinists nor auto mechanics, either separately or together, are a recognized bargaining unit

within the overall practices of the construction industry. Neither machinists nor auto mechanics, for example, are set out in any of the designations established in respect of the ICI sector of the construction industry. In this respect the bargaining unit description in the Machinists/OPG collective agreement is more similar of the past practice of obtaining bargaining rights for certain specific classifications which this union had with certain large employers, such as the TTC for example, than it is to the historic bargaining unit patterns which exist within the construction industry.

33. None of the witnesses called had any directed evidence of the Machinists ever having bargained their agreements with OPG or Ontario Hydro together with any of the building trades unions or as part of a council of such unions. The direct experience of the witnesses was that the Machinists had always bargained their agreements alone. There was, however, one piece of documentary evidence which indicated that this had not always been the case. This was a 1959 Statement of Understanding between the Labour Relations Association St. Lawrence Power Project and the Allied Construction Council, to which the Machinists and the Hydro Electric Power Commission of Ontario (as it then was) were both apparently bound. This Statement reads as follows:

June 1, 1959

ST. LAWRENCE POWER PROJECT

STATEMENT OF AN UNDERSTAND

between

THE LABOUR RELATIONS ASSOCIATION ST. LAWRENCE POWER PROJECT

and

THE ALLIED CONSTRUCTION COUNCIL
(A. F. of L. – C.I.O. – C.L.C.)

and

THE MEMBER UNIONS OF THE ALLIED CONSTRUCTION COUNCIL

The Labour Relations Association St. Lawrence Power Project and the Allied Construction Council A.F. of L. – C.I.O. – C.L.C. have reached a common understanding to maintain existing working conditions and amend wage rates for the employees represented by the Council engaged on the construction of the St. Lawrence Power Project.

This Statement of Understanding testifies therefore that the existing Collective Agreement between the Association and the Council was automatically renewed as of January 27, 1959 in accordance with its terms, and will remain in effect for a period of one year to January 26, 1960. Wage rates will be revised on the varying effective dates as shown on the wage schedules attached hereto.

Duly executed this 15th day of June, 1959.

For the Labour Relations Association St. Lawrence Power Project

("Illegible Signature")
President

("Illegible Signature")
Secretary

For the Allied Construction Council

("Illegible Signature")
Chairman

("Illegible Signature")
Secretary

For the Member Unions

("Illegible Signature")
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.

("Illegible Signature")
International Union of Operating Engineers.

("Illegible Signature")
International Brotherhood of Electrical Workers.

("Illegible Signature")
Hotel and Restaurant Employees and Bartenders' International Union.

("Illegible Signature")
International Association of Firefighters.

("Illegible Signature")
Sheet Metal Workers' International Association.

("Illegible Signature")
International Association of Bridge, Structural and Ornamental Iron Workers.

("Illegible Signature")
Brotherhood of Painters, Decorators and Paper-Hangers of America.

("Illegible Signature")
Bricklayers, Masons and Plasterers' International Union of America.

("Illegible Signature")
United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry of the United States and Canada.

("Illegible Signature")
United Brotherhood of Carpenters and Joiners of America.

("Illegible Signature")
Office Employees' International Union.

("Illegible Signature")
International Hod Carriers, Building and Common Labourers' Union of America.

("Illegible Signature")
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

("Illegible Signature")
International Association
of Machinists.

("Illegible Signature")
Witness to all the foregoing
Signatures.

34. There is no question that many of the other unions that made up the Council are construction unions but there are some, such as the International Association of Firefighters, the Hotel and Restaurant Employees and Bartenders Union and Office Employees International Union that are not. Further there was no evidence as to how long the Machinists were involved with this council bargaining or what work the employees represented by the Machinists that were covered by the Council collective agreement were actually doing, and for how long. Accordingly, given the more recent history in which the practice of the Machinists has always been to bargain alone, I do not find this document, pertaining to a time when there was no statutory distinction between construction and other unions, to be of a great deal of significance.

35. In addition, the evidence made clear that the Machinists' collective agreement with OPG is an agreement with a single employer and is not part of any sort of broader multi-employer bargaining. Absent the somewhat mysterious Council/Association agreement noted above, there was no evidence of the Machinists having entered into standard collective agreements with any other employers covering the electrical power systems sector (or indeed any other sector of the construction industry) as is very much the practice of construction unions. There was some reference made to the Machinists having an agreement with Bruce Power. That agreement however was never introduced into evidence and it is unclear what work it covers. Further, to the extent that the evidence led about that collective agreement indicates anything, it leads to the conclusion that the negotiation of the Bruce Power agreement is not part of a pattern but is entirely separate from the Machinists/OPG negotiations. Such a practice is an anathema to the industry/sector wide negotiation practices of construction unions.

36. The current Machinists/OPG collective agreement does contain a provision which potentially links their relationship to construction industry bargaining. This collective agreement is a six year agreement commencing in 2004 and expiring in 2010 with wage rates for the final three years to be negotiated and if necessary arbitrated commencing in the spring of 2007. The Letter of Understanding concerning this mid-term wage negotiation provides as follows:

Letter of Understanding

Between

Ontario Power Generation
(OPG)

and

International Association of
Machinists and Aerospace Workers
(IAM)

> OPG and the International Association of Machinists and Aerospace Workers agree that the "Wage Re-opener" referenced in Article 16 will be dealt with as follows. The parties will meet in the 60 days prior to April 30, 2007 with a view to agreeing to a wage settlement covering the final three years of this Collective Agreement. Should the parties fail to reach agreement, the issue will be sent to binding arbitration. The single Arbitrator will be mutually agreeable. If the parties cannot agree on an arbitrator, one will be appointed by the OLRB.
>
> The Arbitrated decision will be based on relevant 2007 ICI wage settlements.
>
> Dated this 17th Day of August, 2004 at Toronto, Ontario.
>
> For: Ontario Power Generation — FOR: International Association Machinists and Aerospace Workers
>
> ("Illegible Signature") _____ ("Patrick Murphy") _____

37. This link is however speculative (in that it is unclear if it was ever, or will ever be, resorted to) as well as being indirect. Further, it is unclear what, in these circumstances the language "based on relevant ICI wage settlements" actually means as, as noted above, there are, no ICI wage rates for either machinists or auto mechanics. As such this provision which simply establishes wage comparators for an interest arbitration that may never occur is not sufficient to re-characterize this bargaining relationship as being anything other than one involving a single employer, a single union and a single collective agreement.

38. There is no question that the Machinists/OPG collective agreement contains certain provisions which are far more common within construction, as opposed to non-construction, collective agreements. However, in determining the nature of the Machinists as a union it is far more important to focus on substance rather than form. In this respect the actual practices of the union are far more in keeping with those of a non-construction union even though the language of the collective agreement might not be. The hiring provisions of this collective agreement provide a prime example of this distinction between form and substance. Article 10.2 of the collective agreement reads as follows:

> 10.2 Ontario Power Generation (formerly part of Ontario Hydro) will contact the Union for any employees required in the classifications contained in the Collective Agreement. The Union shall refer members as follows:
>
> (a) The 1st member referred, and subsequent odd numbered referrals, shall be referred in accordance with article 11.
>
> then,
>
> (b) the 2nd member referred, and subsequent even numbered referrals, shall be requested by the employer by name from the Union.
>
> (c) If the Union is unable to supply skilled and qualified local Union members within three (3) working days from when the

> Union receives the request, Ontario Power Generation (formerly part of Ontario Hydro) shall be afforded the right to employ tradespersons from any source. Such tradespersons shall comply with the requirements of Article 6.1 of this Collective Agreement.
>
> (d) Re-employment of local IAMAW members as required by the Workers Compensation Board shall not be a violation of this Collective Agreement nor be subject to the provisions of Article 10.

39. Such a clause requiring new employees to be referred by the union is very much a construction union practice but the manner in which the Machinists have actually implemented this clause is not. The evidence was that they do not have a hiring hall or even any sort of formal list of unemployed members. Rather, on those few recent occasions when the Machinists have been requested to refer new employees, the Grand Lodge Representative, Mr. Murphy, has filled the referrals on an entirely ad hoc basis by either contacting persons who just happen to have provided their resumes to him to see if they were still looking for work or by contacting other union representatives to see if they were aware of anyone who may be looking for work. This is not the general practice of construction unions. Construction unions not only negotiate hiring language but thereafter give practical effect to such clauses through formal and structured rules concerning which members will get which work opportunities. This is the practice because members of construction unions, in the normal course, will look to their union (at least in large part) to find them work as one of the general expectations they have of the unions that represent them. Based on the uncontradicted evidence, this is simply not the case for the members of the Machinists who do not, in the normal course, look to their union to try to find them work .

40. The same "form-verses-substance" analysis is also applicable to the manner in which these parties have dealt with pension and health and welfare benefits. In non-construction collective agreements if such benefits are provided it is usually the employer's responsibility to make the necessary arrangements for them. Conversely, the practice of construction unions is to establish their own plans and thereafter require employers to make monthly remittances to these plans. Here no benefits are provided by OPG under the Machinists collective agreement. However the Machinists have not established their own plans to provided coverage and therefore, while the direct payments to the employees in lieu of benefits provided for by this agreement may not be a non-construction norm, they are certainly not a construction union practice either.

41. There is also no question that this employer has generally treated the employees in the Machinists bargaining unit as being construction workers and has generally grouped the Machinists with the various construction unions that it has agreements with. However, there is no evidence that the fact that the Machinists health and safety representative is part of a committee with representatives of construction unions or that the Machinists are bound to the Chestnut Park or the Inn-on-the-Park Accords, for example, has somehow fundamentally changed the practices of the Machinists as a union. It is the union's practices which are relevant to the determination of its character and therefore the employer's practices and opinions are only relevant if they are based on, and/or have affected, the union's practices. Neither of these things has occurred here. The evidence which was called in this respect indicates that the employer's characterization of the Machinists as one of its "construction unions" initially came about and continued thereafter primarily as a result of the internal organizational structures of Hydro rather than because of

anything the Machinists did. In the overall circumstances, in which the Machinists after all only represent one very small bargaining unit of employees of the employer's construction division, the employer's practice of treating them in more or less the same way as the "other construction unions" makes sense but it does not fundamentally alter the character of the union. The Machinists were a round peg being forced into a square hole but their basic shape, as a union, did not change.

Conclusion

42. Over the years the Ontario Legislature has seen fit to introduce various provisions into the Act which only apply to the construction industry and more importantly for the purposes of this case, which only apply to construction unions. As a result, construction unions enjoy certain unique rights but also owe certain unique duties and obligations. This parallel scheme established by the Act is not an arbitrary occurrence but is rather recognition of the fact that not only are labour relations in the construction industry unique but so to is the role which construction unions play in this industry, specifically including the manner in which they have traditionally represented their members.

43. The practices of construction unions identified by the Board in *Ontario Hydro, supra*, are relevant considerations for assessing construction union status as they are all indicative of the unique role which such unions play in this industry and in the work lives of their members. This unique role within the industry and this unique relationship between construction unions and their members has been specifically commented on in certain of the reports which have studied the construction industry (see for example The (Goldenberg) Royal Commission on Labour Management Relations in the Construction Industry) and which have thereafter resulted in the establishment of, or amendments to, the construction industry provisions of the Act. Conversely, unions that are not construction unions do not occupy any such role in this industry even if they happen to represent some construction workers. Further, employees who perform construction work (such as at least some of the employees of this employer who are represented by the PWU) but who are not represented by construction unions do not generally look to their union for training, employment, standard terms and conditions of work with multiple employers, and common benefit and pension plans.

44. As the Board has made clear, based on the specific wording of the Act, a relatively high threshold must be met to establish that a union is a union within the meaning of section 126.1 of the Act. In *Ontario Hydro* at paragraph 106 the Board states:

> 106 I reject the notion that "pertains to" must or should be given a broad interpretation. The PWU had to assert that proposition for purposes of its argument. However, the analysis I have already engaged in above suggests the contrary. That is, that the entire definition, and specifically the words "pertains to" should be given a restrictive interpretation in order to accomplish the separation in the Act between construction and non-construction. The very meaning of "pertains to" suggests a more restrictive definition which would limit the class of trade unions which will satisfy the definition; that is, which are construction trade unions.

Further, in *United Brotherhood of Carpenters and Joiners of America, Local 1072, supra,* the Board stated:

> 81. The Board held that the language of section 126 should be read restrictively, so as to distinguish as clearly as possible, between those unions that are caught by the special construction provisions of the Act, and those that are not. And from that perspective, the Board found that the PWU was deficient in a number of ways: it did not represent any bargaining units composed exclusively of construction workers; its so-called construction practice was largely confined to a single employer - the public utility, Ontario Hydro; it was not a craft union or a local of a recognized building trades union; it did not bargain in conjunction with other construction unions or have bargaining relationships with a number of construction employers; it did not operate a hiring hall or have other common institutional features of a construction trade union; it had not applied or sought to make use of the construction provisions of the legislation; and most of its members were not construction workers. Against that background, the Board concluded that the fact that some PWU members regularly did construction work was not sufficient, by itself, to establish that the PWU was a trade union that "according to established trade union practice pertains to the construction industry".
>
> 82. In other words, in assessing the nature of the PWU, the Board looked at trade union practices, *in general* - not just the practice of the PWU itself. The template for evaluation was the entrenched pattern of institutional and collective bargaining arrangements that had been established, or were customarily followed, by recognized construction unions. And from that perspective, the PWU was not (as counsel in this case put it) "part of the club".

and therefore, ultimately concluded as follows:

> 98. It is true that some members of Local 1072 may sometimes perform construction work on a construction site; and when they do that, they may work in conjunction with construction workers, and may receive payments that are linked to those in the relevant construction industry collective agreement. It cannot be said that Local 1072 has nothing to do with the construction industry at all. However, on balance, I find that Local 1072 is not a union that "*according to established trade union practice* pertains to the construction industry". The non-construction practices and features of Local 1072 far outweigh its rather minimal and peripheral connections to the construction industry.

45. This restrictive approach to the unions which may join the "section 126(1) club", which specifically results from the purpose underlying the separation between the two types of unions and which goes beyond a simple analysis of the type of bargaining units a union may represent, is not conducive to a union being found to be a construction union against its will and, in essence, as a result of a historical accident. In that respect the treatment of unions is very different from that of employers which, based on the wording of the Act, can quite easily become construction employers without ever having intended to.

46. Ultimately it is this restrictive interpretation of the definition of construction union which is determinative here. I am prepared to assume, without conclusively finding, that some

and possibly a majority of OPG's employees falling within the Machinists' bargaining unit could be found to be construction workers, as that definition has changed over time and depending on the specific work which they performed. However, here the other practices of construction unions are simply not present. In this respect the Machinists are, like Local 1072 of the Carpenters, best characterized as being a union which may have some connection with the construction industry but is nevertheless not a construction union. To accept OPG's argument would be to find that the Machinists are a construction union simply because they acquired bargaining rights for a single unit of "construction workers" at some point in the 1950's and despite the fact they have never claimed to be a construction union and do not look like a "construction union" in any other way. This would be to ignore the purpose of the statutorily mandated distinction between construction and non-construction unions and would thereby make this distinction logically irrelevant.

47. Accordingly I find that the Machinists are not a union pursuant to section 126(1) and that therefore the Board has no jurisdiction to determine this grievance under the provisions of section 133 of the Act. As such, this referral is hereby dismissed. However, as noted above, this decision only relates to the status of the Machinists and in no way determines whether any of the employees on whose behalf the grievance was filed are construction employees under this Act or any other statute or what their entitlement to severance and termination pay may ultimately be.

1330-07-R International Union of Operating Engineers, Local 793, Applicant v. **Silver Concrete Pumping Limited**, Responding Party v. Ian Fierheller, Intervenor

Certification – Construction Industry – An employee alleged that he had been misled into signing a membership card contrary to s. 128.1(5) of the LRA – The Board stated that in considering allegations of this nature, it is important to distinguish between an employee's change of heart about joining a union, and a genuine subsequent realization that the consequences of the employee's signing a card were substantially different from what had been represented to him/her – In this case, the Board found that no misrepresentation had been made to the employee and that he simply had had second thoughts about joining the union – In coming to this conclusion, the Board noted that the employee: had presented two contradictory explanations that were unreasonable; had signed the membership card which was simple and straightforward; had provided a considerable amount of personal information on the membership card that was inconsistent with his explanation for signing the card; and had familiarity with being a member of a union from a previous place of work – Accordingly, the Board gave no weight to the submissions made by the employee and declined to order a hearing to receive evidence from him about the allegations he made – Certificate granted

BEFORE: *David A. McKee*, Vice-Chair.

DECISION OF THE BOARD; September 5, 2007

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") that the applicant elected to have dealt with under section 128.1 of the Act.

2. The Registrar has certified that the applicant had been found to be a trade union in an earlier proceeding under the Act. Therefore, having regard to the Registrar's certificate and section 113 of the Act, the Board finds that the applicant is a trade union within the meaning of sections 1(1) and 126 of the Act and is an affiliated bargaining agent of a designated employee bargaining agency. Pursuant to the designation issued by the Minister under section 153(1) of the Act on July 13, 1978, the designated employee bargaining agency is the International Union of Operating Engineers and Local 793 of the International Union of Operating Engineers.

3. The responding party filed its response with the Board within the time stipulated by Rule 25.5 of the Board's Rules of Procedure and provided the Board with the requisite information in accordance with subsection 128.1(3) of the Act.

4. The Board finds that this is an application for certification within the meaning of section 128 of the Act and is an application made pursuant to section 158(1) of the Act which provides that:

> An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,
>
> (a) an employee bargaining agency; or
>
> (b) one or more affiliated bargaining agents of the employee bargaining agency,
>
> on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

5. The Board further finds, pursuant to section 158(1) of the Act, that all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of the responding party in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the responding party appropriate for collective bargaining.

6. One employee, Ian Fierheller, made submissions to the Board about this application. It was sent to the Board sometime before 11:32 a.m. on July 25, 2007 by faxed transmission. The submissions are hand-printed by Mr. Fierheller and read as follows:

> I Ian Fierheller was approached by two members of Local 793 Union on July 12/07 at my place of work 41 Ritin Lane (7:00-7:30 p.m.). At this time I signed a union card. Also I believe one of my co-workers signed as well. The union told me the card was to show that we had met and talk [sic]. I was misled on this matter. They did not tell the signing of that card was to begin an application to certify my work as a union shop. They told me I had to sign because I was in the union from a previous work place. Work for a union shop is not what I want. I feel I was tricked into signing the union card.
>
> I have been working at Silver Concrete Pumps for 3-4 months. I am very happy with my working conditions. I have benefits and a good pay rate. It is my feeling and my rights I do not want to work for a union shop at Silver Concrete Pumps.

7. By decision dated July 30, 2007 I asked the parties for their submissions, which they provided. The applicant says basically that there is no need to inquire into the allegations made and that the Board should simply disregard them. The Employer asserts that the statement alone should cause the Board to give no weight to any membership evidence filed by Mr. Fierheller or should at least cause the Board to inquire into the allegations made. By decision dated August 15, 2007 I directed Mr. Fierheller to respond to those submissions. He did not do so.

8. These allegations engage subsection 128.1(5):

> **128.1** (5) Nothing in subsection (4) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section.

The section does not require the Board to inquire into every allegation made, but simply says that the Board may, in determining the percentage of employees in the bargaining unit who are members of the trade union, consider evidence or submissions relating to a number of areas. In this case, the allegations assert, without using the word, a misrepresentation, since nothing that could be called fraud or coercion is pleaded.

9. In considering any submission from an employee in the bargaining unit, the Board is faced with two primary considerations. First, the Board must be concerned with its own process. The Board relies on the honesty and integrity of unions in applying for a certification. The Board expects that the membership evidence will, in fact, be obtained from the persons whose names appear on the cards and have been obtained without resort to coercion or fraud or misrepresentation. Membership evidence is submitted by the union and is not seen by any other party. Hence, any substantial reason to question the validity of the membership evidence will cause the Board to investigate the allegations to defend the integrity of its own process.

10. On the other hand, the experience of the Board over the past 50 years has been to place little weight on an apparent "change of heart" on the part of an employee who seeks to disavow the card he signed within a short period of time. The Act, of course, gives no significance on any "second thoughts" that an employee may have after joining a union. Subsections 128.1(4) and (5) make such considerations irrelevant. It is important to distinguish

between a change of heart about joining the union, and a genuine subsequent realization that what the employee did was substantially different from what it was represented to be. In doing so, the Board treats employees as reasonable and responsible adults. That is, it assumes that people read what they sign and do not behave in a frivolous or uncaring manner about events and documents that may have a significant effect on their life. In addition, one is always concerned as to whether an employee's desire to make representations may be inspired more by his or her concern about the employer's reaction to the application, than any sudden realization that things are not as they appeared to be a few days before.

11. There are a number of troubling issues about Mr. Fierheller's statement. It was faxed to the Board. The fax transmission was accompanied by a fax cover sheet identical in form to the fax cover sheet used by the Employer to return the Notice of Posting in the application for certification. Mr. Fierheller's faxed transmission contains no hint whatsoever of the time or location at or from which the fax was sent. This is unusual, though not unheard of, but suggests a deliberate effort to conceal the address of the fax machine used. This is odd given his willingness to provide a telephone number both at home and at work where he may be contacted further.

12. The statement itself presents two contradictory statements. First, he says that he was misled because "The union told me the card was to show that we had met and talk [sic]". A few lines later he says: "They told me I had to sign because I was in the union from a previous workplace". The inconsistency itself was troubling, and in any event, neither explanation is reasonable. The form of the membership card submitted is relatively simple and quite straightforward. Above the name and personal information to be filled in, the card simply says:

APPLICATION FOR MEMBERSHIP
INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 793

Obligation of Membership

I agree to abide by the Constitution of the I.U.O.E.

I wish the I.U.O.E., Local 793 to represent me for
the purpose of collective bargaining

The print is large and easy to read. It requires the employee's name, address and so on. This large amount of information required of a person executing the card is entirely inconsistent with the first explanation given. In any event, Mr. Fierheller does not allege he has any difficulty in reading the English language and was certainly able to write to the Board in that language, expressing his views quite clearly. Faced with the clear and simple layout of the card, the contradictory explanations offered seem unreasonable. That is, it is not reasonable that an employee who is presented with a card and provided with either of those two explanations would willingly sign the card believing that the purpose was only the one that was alleged to have been made by the Union organizer.

13. In any event, Mr. Fierheller was under no illusion as to what the card was. It was a "union card", meaning a membership card. He was apparently familiar with being a member of a union in a unionized environment in a previous place of work. That is, he was under no doubts or illusions about what the nature and quality of the document that he signed was.

14. Mr. Fierheller's real objection is that he does not wish to work in a union shop. That is, he has apparently reflected on the consequences of signing a union membership card, which he acknowledges he did, and has decided he does not like the consequences of that Act. This is not misrepresentation. It is simply an employee who has had second thoughts.

15. In these circumstances, I give no weight to the submissions made by Mr. Fierheller, and decline to order a hearing to receive evidence from him about the allegations he has made.

16. On the basis of only the information provided in the application (including the information and membership evidence filed by the applicant) and the information provided under subsection 128.1(3) of the Act, as well as the considerations set out above about the submissions of Mr. Fierheller, the Board is satisfied that more than fifty-five per cent of the employees in the bargaining unit were members of the applicant on the date the application was filed. The applicant filed membership evidence on behalf of 2 persons, both of whose names appear on the list of employees submitted by the employer.

17. The applicant has asked that it be certified pursuant to section 128.1 relying solely on the number of persons in the bargaining unit who are members of the applicant. It is entitled to do so under section 128.1. There is nothing raised in the application or the response that would cause the Board to consider directing a representation vote.

18. The Board has received no objection from any employee within the time set in the Notice to Employees provided to the responding party for posting.

19. The Board is satisfied that it should certify the applicant.

20. Section 128.1(24) of the Act, which states as follows, provides for the issuance of more than one certificate if the applicant has the requisite support:

> If an election under this section is made in relation to an application for certification that relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126,
>
> ...
>
> (b) if the Board certifies the trade unions on whose behalf the application for certification was brought as the bargaining agent of the employees in the bargaining unit under clause (13) (a), it shall issue one certificate that is confined to the industrial, commercial and institutional sector and another certificate in relation to all other sectors in the appropriate geographic area or areas;

Therefore, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the International Union of Operating Engineers and Local 793 of the International Union of Operating Engineers in respect of all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Silver Concrete Pumping Limited in the industrial, commercial and institutional sector of the construction industry in the Province of

Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

21. Further, pursuant to section 128.1(24) of the Act, a certificate will issue to the applicant trade union in respect of all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Silver Concrete Pumping Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

22. The responding party is directed to post copies of this decision immediately in a location or locations where they are most likely to come to the attention of individuals in the bargaining unit. These copies must remain posted for a period of 30 days.

2309-05-G; 3113-05-JD Sheet Metal Workers' International Association, Local 473, Applicant v. **Smith Brothers Contracting Corp.** and the Electrical Power Systems Construction Association, Responding Parties; Sheet Metal Workers' International Association, Local 473, Applicant v. Smith Brothers Contracting Corp., Electrical Power Systems Construction Association and United Brotherhood of Carpenters and Joiners of America, Local 1946, Responding Parties

Construction Industry Grievance – Jurisdictional Dispute – The Sheet Metal Workers challenged the assignment of covers for columns in an office building atrium to the Carpenters – The Board determined that the dispute involved only 12 of 27 columns, because it centred on the air-handling features at the top of the particular columns – The unions agreed that each of them had the authority to perform the work, and that the Board's traditional criteria for resolving jurisdictional disputes for the most part were either not present or not helpful – The Board accepted the Carpenters' submission that it should therefore have regard to the practical realities of how the construction unfolded on a day-to-day basis – Since the erection and covering of the columns had been contracted to a drywall contractor in a bargaining relationship with the Carpenters, it would have been inefficient to import the Sheet Metal Workers and try to integrate them into the other construction work being carried out – The Board held that the work was properly assigned to the Carpenters, and the Sheet Metal Workers' grievance was dismissed

BEFORE: *Mary Ellen Cummings*, Alternate Chair.

APPEARANCES: *Jerry Raso, Alan McQuillan* and *John Barltrop* for the applicant; *David Francis* and *William Murray* for Smith Brothers Contracting Corp.; *John Bruce* and *Max Jackson* for the Electrical Power Systems Construction Association; *Harold Caley* and *Glen Morrice* for the United Brotherhood of Carpenters and Joiners of America, Local 1946.

DECISION OF THE BOARD; September 5, 2007

1. The application in Board File 3113-05-JD was brought pursuant to section 99 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended ("the Act"), seeking a determination of a dispute about a work assignment. In a decision dated January 6, 2006, the Board described the work in dispute as follows:

> 2. The project concerns a large office building at the Bruce Nuclear Generating Station in Kincardine. The atrium has 26 columns. The columns are covered in fibreglass-reinforced gypsum. The covers on the columns were fabricated elsewhere and brought to the site in pieces, to be erected from the ground up. The column covers consist of a base that is filled with insulation, and then capped off. Above the base is a perforated stainless sleeve, and above that, more fibreglass-reinforced gypsum, up to the ceiling. The covers surround I-beams.
>
> 3. Initially, the plans called for the covers, and perforated stainless steel sleeves, to be architectural, that is, decorative. At some point, the plans changed, with the result that some of the columns were used to move air. Twelve of the 26 columns are connected to the air-handling system, with the result that air travels in the void between the cover and the galvanized I-beam behind the cover. The air passes out to the atrium area, through the perforations in the metal sleeves.
>
> 4. The column covers and the stainless steel sleeves were constructed in an identical manner whether they were used to move air or not. The materials are the same in both applications. The Sheet Metal Workers assert that in the columns that are connected to the air-handling system, the I-beams are covered with galvanized sheet metal, but in the remaining columns, the I-beams are not so covered. Smith Brothers does not know whether that is so, because it had no role in the mechanical side of the project. It is essentially a drywall contractor. It installed the covers without much regard to the state of the columns.
>
> 5. The Carpenters installed the covers and perforated stainless steel plates.
>
> 6. The Sheet Metal Workers claim the erection and installation of the column covers that were connected to the air-handling system, that is, 12 of the 26 columns. They assert that the column covers are plenums, and that the perforated stainless steel sleeves are air diffusers. There is some support for that characterization, at least on the mechanical drawings. However, Smith Brothers is not a mechanical contractor, and neither it nor the Carpenters accept that characterization. They assert that the work in dispute is a typical carpentry installation of decorative column covers with associated decorative metal sleeves, and that it is immaterial whether the columns were then connected to the air-handling system. They note that the work performed was no different as between those columns that were connected to the air-handling system and those that were not.
>
> 7. The parties are agreed that the Sheet Metal Workers do not claim the installation of the base of any of the columns, since they were separate pieces, which were insulated and capped.

2. I made one error in describing the work. The claim of the Sheet Metal Workers is in respect of 12 of 27 (rather than 26) column covers.

3. The grievance referral in Board File 2309-05-G depends on the Sheet Metal Workers being successful in the work assignment dispute.

4. Although the history of the column covers is not without dispute, the most likely explanation is that, initially, all of the covers were intended simply to cover the I-beam supports in the lobby of the building. They were not initially intended to contribute to air handling. Counsel for EPSCA suggests that the mechanical drawings provide some hint that the column covers were to be "air diffusers", a suggestion that the Sheet Metal Workers should have followed up on in the mark-up meeting in respect of the mechanical work. It is not disputed that these "air diffusers" were not included in the subcontract to the mechanical contractor. I do not think that the Sheet Metal Workers can be faulted for failing to pick up on an oblique reference in respect of work that was not part of the work tendered to the sheet metal contractor. There is also significant information to suggest that at some point after initial mark-up meetings and, perhaps, after the mechanical contractor had installed the duct work, the architect determined that the column covers could also be used to circulate air. On the architectural drawings, the column covers were called "perforated covers". So it is not at all certain that the Sheet Metal Workers were in a position to claim the work at an earlier stage. The work was included in the contract let to Smith Construction, a drywall contractor.

5. Both trade unions acknowledge that the work could have been performed by either of them. The Carpenters take the matter a step further and suggest that this is a gray area, where the typical factors the Board uses to decide work assignments are not helpful. The Carpenters argued that given it is agreed that they should have built 15 of the column covers, and the base of the 12 column covers that are in dispute, it makes sense that the Carpenters would build the tops, including the decorative metal sleeves, that are also air diffusers. In considering the sequence of the work, the sheet metal contractor's work was finished and the duct work, all of it above the ceiling, was installed.

6. There is some disagreement about how much work was involved in the aspects of the job the Sheet Metal Workers claim. Its steward, John Baltrop, observed the work for an hour to an hour and a half, but estimated that the tasks would consume 360 hours. Smith Construction disagreed, asserting that the decorative metal sleeves took two man hours per column, for a total of 30 hours and the total time to build the 12 columns at issue was 80 hours, of which, it is agreed, constructing the bases was properly the work of the Carpenters. Although Smith Construction does have an interest in the calculation of the hours being as small as possible, from the description of the work tasks explained to me, Smith's estimate seems more reasonable. Mr. Baltrop was forthright in his statement, acknowledging that he was not in a position to say more than what he observed over a fairly short period of time. It appears then, that the Carpenters performed approximately 60 hours of work which the Sheet Metal Workers claim.

7. The Sheet Metal Workers argue that the amount of work is not material because what is at stake is work which is at the core of its trade jurisdiction. The columns have been fire-proofed and covered with galvanize because air travels into the plenum and out through the air diffusers. No one challenges that the core of the sheet metal trade is the fabrication and

installation of air handling systems, and the air diffusers are part of the air handling system that was installed.

Analysis

8. As the parties acknowledged (to a degree), the criteria the Board typically uses to decide jurisdictional disputes are not present or are not helpful. This work took place in the electrical power systems sector. There is no area practice, there is no employer practice. There are no trade agreements. Both trades acknowledge that the other is equally capable of performing the work. The work is fairly simple. Collective agreements are not helpful because much depends on how you characterize the work or focus on its end use. If the work is characterized as construction of an air diffuser in an air handling system, the Sheet Metal Workers' collective agreement claims such work. If the work is characterized as the installation of pre-fabricated gypsum column covers and the installation of decorative metal screens, then the Carpenters' collective agreement claims such work.

9. I do not agree with the Sheet Metal Workers' claim that the work, as it unfolded in this case, is at the core of its jurisdiction. It did not appear that the column covers were to perform an air diffusing function until well along in the construction plan. In the end, the column covers served two roles, to be decorative and to diffuse air.

10. Given that the Carpenters were properly assigned all of the work in respect of the other column covers, and the construction of the base of the column covers at issue, it was not unreasonable, in the circumstances of this case, to assign the work in dispute to the Carpenters. Smith Construction is a drywall contractor and this work had been included, not unreasonably, in its contract. The Carpenters had the ability to perform the task. Moreover, it would not have been efficient for Smith Construction to bring in Sheet Metal Workers to work approximately 60 hours that comprised a set of tasks that would have to have been integrated and co-ordinated with the work of the Carpenters. As counsel for Smith Construction argued, the Board must have some regard for the practical realities of how construction unfolds on a day-to-day basis. If the work had been included in the contract let to the sheet metal contractor, and performed by members of the Sheet Metal Workers, the Board would likely have found that assignment reasonable too.

11. In all the circumstances of this unusual case, the assignment of the work in dispute to Carpenters was reasonable.

12. In the result, the grievance in Board File 2309-05-G is dismissed.

2193-04-M Ontario Public Service Employees Union, Applicant v. **St. Lawrence College**, Responding Party

***Colleges Collective Bargaining Act* – Employee – Status – OPSEU asked the Board to determine whether four continuing education instructors were employees under the CCBA and, if so, whether they fall within the academic bargaining unit – St. Lawrence brought a motion seeking to have the Board defer the issue to arbitration – The Board held**

that its powers under s. 81 of CCBA were similar to the jurisdiction it enjoyed regarding employee status disputes under s. 114(2) of the LRA – The parties agreed, and the Board accepted, that arbitrators had the authority to make the same determinations – The Board was not satisfied that there was any overriding public policy or remedial opportunity that made it more appropriate than arbitration for a determination of the issue – Application dismissed

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *Donald K. Eady, Mary Ann White, Laurie Chapman* and *Hilary Cook* appeared on behalf of the applicant; *J. Lynn Thomson, Jim Gibson, Cindy Bleakney* and *Pennie Carr-Harris* appeared on behalf of the responding parry.

DECISION OF THE BOARD; September 19, 2007

1. The Ontario Public Service Employees Union brings this application under section 81 of the *Colleges Collective Bargaining Act* ("CCBA") for determination of whether four individuals employed by St. Lawrence College are employees within the meaning of the Act, and if so whether they fall within the academic bargaining unit represented by OPSEU. St. Lawrence has a brought a preliminary motion, arguing that the Board should defer determination of this issue to arbitration. This decision addresses that preliminary motion.

2. Section 81 of the CCBA provides:

> If, in the course of bargaining for an agreement or during the period of operation of an agreement, a question arises as to whether a person is an employee, including a question as to whether a person employed as a chair, department head, director, foreman or supervisor is employed in a managerial or confidential capacity within the meaning of the definition in section 1 of "person employed in a managerial or confidential capacity" and the Schedules, the question may be referred to the Ontario Labour Relations Board and its decision thereon is final and binding for all purposes.

3. Section 1 of the CCBA defines employee to mean:

> "employee" means a person employed by a board of governors of a college of applied arts and technology in a position or classification that is within the academic staff bargaining unit or the support staff bargaining unit set out in Schedules 1 and 2; ("employé")

4. Section 67 of the CCBA provides for two statutorily defined bargaining units: the academic staff bargaining unit described in Schedule 1 to the CCBA; and the support staff bargaining unit described in Schedule 2 to the CCBA. OPSEU represents the academic staff at St. Lawrence. Schedule 1 provides:

> The academic staff bargaining unit includes the employees of all boards of governors of colleges of applied arts and technology who are employed as teachers, counsellors or librarians but does not include,

(i) chairs,
(ii) department heads,
(iii) directors,
(iv) persons above the rank of chair, department head or director,
(v) other persons employed in a managerial or confidential capacity,
(vi) teachers who teach for six hours or less per week,
(vii) counsellors and librarians employed on a part-time basis,
(viii) teachers, counsellors or librarians who are appointed for one or more sessions and who are employed for not more than twelve months in any twenty-four month period,
(ix) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practise in Ontario and employed in a professional capacity, or
(x) a person engaged and employed outside Ontario.

5. The application relates to the employment of four individuals to teach courses in the Continuing Education department of St. Lawrence. St. Lawrence's position is that employees teaching Continuing Education courses are not, and never have been, included in the academic bargaining unit set out in Schedule 1 to the CCBA, and therefore the individuals in question are not employees within the meaning of the CCBA.

6. OPSEU states that each of the four was engaged in the instruction of academic courses. It asserts that it was in receipt of union dues from St. Lawrence on behalf of two of the four. In early spring 2004 the union and the employer were engaged in bargaining for a renewal collective agreement covering academic employees. The union and the employer were preparing a voters' list for a scheduled strike vote. Within this context, the union states that it became aware that St. Lawrence had removed the two individuals from the dues check off list. The union subsequently became aware that the other two individuals were deemed not to be employees by St. Lawrence.

7. OPSEU has filed multiple grievances relating to the employment status of all four individuals. Over ten grievances had been filed as of April 2007. Some of those grievances have been referred to arbitration and some have not.

Analysis

8. The union notes that under the CCBA, and unlike the *Labour Relations Act, 1995,* bargaining units are statutorily defined. It concedes that under the *Labour Relations Act, 1995* the Board typically only determines whether an individual is an employee within the meaning of the Act and defers to arbitration the question of whether the individual falls within a particular bargaining unit. The Board's role under CCBA, however, is different it argues. The Board determines not only whether an individual is an employee within the meaning of the Act but also which of the two statutorily defined bargaining units the individual falls within.

9. It is the primary job of the Board, it argues, to interpret the statute. In this respect it notes that the issue of whether an individual is an employee within the meaning of CCBA may arise within a variety of contexts. Reference is made to two. First, the union notes that in *La Cité Collégiale Ottawa*, [1998] OLRB Rep. July/August 636, the Board held that the employer and the union were not free to contract out of the statutorily defined bargaining units for the purposes of

the union's duty of fair representation pursuant to section 76 of CCBA. The Board went on to determine that the applicant in that case was an employee within the statutorily defined bargaining unit, and that both the union and the employer breached the Act. Second, as noted, the union states that this case originates from the preparation of the voters' list for a strike vote. Section 59(1) of CCBA makes a vote by "the employees in the bargaining unit" a pre-condition to a strike under the Act. The union, however, did not argue that this was a live issue for the purposes of this decision.

10. I accept that under section 81 of CCBA the Board can determine not only whether an individual is an employee within the meaning of the CCBA, but also whether the individual falls within one of the two statutorily defined bargaining units: *Fanshawe College of Applied Arts & Technology*, [1991] OLRB Rep. Sept. 1044 at paragraph 3; *le Conseil d'administration du Collège Boréal and la Coopérative du Collège Boréal Limitée*, [2000] OLRB Rep. May/June 453 (June 5, 2000) at paragraph 19. Both parties, however, agree that the Board's power to do so is not exclusive and that arbitrators have concurrent jurisdiction to make this determination.

11. I also agree that it is the primary role of the Board to interpret the statute. Further, it may be necessary for the Board to determine whether an individual is an employee within Schedule 1 or Schedule 2 for the purposes of addressing a duty of fair representation complaint under section 76 or for the purposes of determining whether a strike vote is valid. There is no suggestion, however, that it is necessary for the Board to make such a determination in this case for either of these reasons or for the purposes of making any other determination under the statute. The question remains, therefore, whether the Board should defer to arbitration.

12. In *Hamilton Health Sciences Corp.*, [2002] OLRB Rep. Sept./Oct. 856 (October 15, 2002), the Board restated the approach it takes in determining whether to defer to arbitration or to exercise its jurisdiction to determine whether a person is an employee within the meaning of the *Labour Relations Act, 1995*, under what is now section 114 of that Act. After noting that the role of both the Board and labour arbitrators have evolved over time, with "judicial recognition that labour arbitrators are obliged to interpret and apply public statutes and to take jurisdiction over almost any dispute that has its roots in the employment relationship and the collective agreement it governs", the Board continued as follows:

> Today, it is more appropriate to ask not whether private arbitration is "... the particularly appropriate forum for resolving this issue" but whether there is some characteristic to the problem, some over-riding public policy or remedial opportunity, that makes the Board more appropriate than resort to the private dispute resolution process the parties have committed to under their collective agreement. Put more bluntly, the Board will defer to the parties' grievance and arbitration procedure unless there is some compelling reason to do otherwise.

13. At issue in this case, of course, is the Board's role under section 81 of CCBA, not section 114 of the *Labour Relations Act, 1995*. Under section 81 the Board's determination is "final and binding"; under section 114, the Board's determination is "final and conclusive for all purposes". In my view, this is a distinction without a difference. Under section 81 the Board determines whether an individual is an employee within the meaning of the CCBA, but also whether the individual falls within one of the two statutorily defined bargaining units; under section 114 the Board determines only whether a person is an employee within the meaning of the

Act, while an arbitrator has jurisdiction to determine whether the person falls within a bargaining unit. The ratio of *Hamilton Health Sciences*, however, is based not on a difference of function between the Board and arbitrators, but rather on the premise of concurrent jurisdiction. It seems to me this logic applies equally to determinations under section 81 of the CCBA. Indeed, as noted, both parties to this proceeding take the position that boards of arbitration under CCBA have concurrent jurisdiction to make a section 81 determination. There is therefore no reason to adopt a different test for deferral to arbitration under CCBA than was adopted by *Hamilton Health Sciences*. Is there, then, some compelling reason why the Board should not defer to arbitration in this case?

14. As I understand the union's argument, it advances essentially five reasons as to why the Board should not defer. First, it states that an arbitrator might take the view that she or he did not have jurisdiction to make the determination. In this respect, it notes that CCBA contains no parallel to s. 48(12)(j) of the *Labour Relations Act, 1995*, which provides an arbitrator with the power to "interpret and apply human rights and other employment related statues, despite any conflict between those statutes and the terms of the collective agreement". Second, it notes that one arbitrator appointed under CCBA has specifically declined to take jurisdiction to make this determination: arbitrator Mitchnick in *George Brown College*, unreported, February 16, 1993. Third, it argues that there are "wildly inconsistent" arbitral decisions with respect to whether teachers of continuing education courses falls within CCBA, and points to the review of the arbitral jurisprudence by arbitrator MacDowell in *St. Lawrence College*, dated July 22, 2005. (The employer rejects the proposition that there are inconsistent arbitral decisions, and invites me to carefully review MacDowell's decision.) Fourth, in any event, it argues that a decision by one arbitrator does not bind another. Fifth, it argues, by way of contrast, a decision of this Board would be conclusive and binding on arbitrators. For these reasons, it argues, the Board should exercise its discretion under CCBA and determine the issue.

15. A difficulty with the union's argument is that a decision by this Board determines only the status of the individuals in question: it would not determine whether all employees teaching "academic courses" in "Continuing Education" were employees within the academic bargaining unit, let alone what rights or entitlements they may have under the terms of the collective agreement. Further, even if a decision of a panel of this Board is binding on arbitrators (an issue to which I return below), it is not binding on other panels of this Board: a decision by one panel of this Board is not a guarantee that a "consistent" decision will be reached by another, or even the same, panel of this Board. Nonetheless, it is the case that this Board does strive for consistency in decision making. Accordingly, I will address the union's arguments.

16. At the core of the union's arguments is the premise that this Board's decision would be persuasive if not dispositive of issues to be decided by arbitrators appointed under CCBA. It cites *Re General Concrete of Canada Ltd. and Local 487, UCLGWIU*, [1978] O.J. No. 3712 for the proposition that a board of arbitration is bound by this Board's conclusion. There are in fact two versions of this case in the O.J. data base, with different citations. The union provided a copy of this case with the citation given above. It is missing portions of the text and is therefore difficult to follow. A complete version of the case, as reported in the printed version of the Ontario Reports at (1978), 22 O.R. (2d) 65, can be found at [1978] O.J. No. 3624 (Div. Ct.). A review of the complete version of the case shows that it is does not support the proposition for which it is advanced by the union.

17. *General Concrete of Canada* was an application for judicial review of a decision of a board of arbitration which determined that five independent truck drivers, who were not members of the union, were "employees" within the meaning of the collective agreement and that therefore the employer was in breach of a provision of the collective agreement requiring it to employ union members. The application for judicial review was allowed by Van Camp and J. Holland, JJ. each writing a separate opinion. Krever, J. wrote a dissenting opinion which would have dismissed the application.

18. Immediately prior to the grievance giving rise to the arbitration award, the union had applied to this Board for determination of whether or not the individuals in question were employees within the meaning of the Labour Relations Act. The board of arbitration referred to this fact in its decision.

19. Van Camp, J. held that the board of arbitration asked itself the wrong question in commencing with the decision of this Board that the individuals in question were employees, with the result that its decision had to be quashed. It appears from the portions of the arbitration award reproduced by Van Camp, J. that she was of the view that the board of arbitration wrongly concluded that this Board's determination of whether the individuals were employees within the meaning of the Act was conclusive of the question of whether they were employees within the meaning of the collective agreement.

20. J. Holland, J. also held that the board of arbitration asked itself the wrong question and further held that it acted without jurisdiction when it permitted the union to rely on the decision of this Board, rather than calling evidence, to establish the correctness of its position, which decision "was extraneous to the issue before the board of arbitration" (see p. 89).

21. Krever, J. held that the board of arbitration did not ask itself the wrong question because, in his view, in referring to the Board's decision it did *not* treat it as conclusive of the issue before it.

22. *General Concrete*, therefore, is not authority for the proposition that a board of arbitration is bound by this Board's conclusion. To the contrary: Van Camp, J., and J. Holland, J. held that a board of arbitration which held itself bound by a decision of this Board would be committing an error of law going to jurisdiction while Krever, J., in coming to his conclusion that it had not committed such an error, found it necessary to conclude that the board of arbitration had not held itself so bound.

23. It is also worth noting that according to the decision of J. Holland, J. (at p. 80):

> The Ontario Labour Relations Board in determining that [the] five were "employees for the purposes of the Act" expressly made it clear that this was not a determination that these persons were employees under the collective agreement. The Board's decision included the following:
>
> > The Board in reaching its conclusion that the persons named ... are employees *for purposes of the Act* [J. Holland, J.'s emphasis] wishes to emphasize that we express no opinion as to whether these persons are employee members of the

> bargaining unit described in the collective agreement between the applicant trade union and the respondent.

24. The union also cites *Southern Ontario Newspaper Guild Local 87 v. London Free Press Printing Co.*, [1993] OLRB Rep. Oct. 977. In that case the panel stated that a determination by this Board that a person is an employee within the meaning of the Act is not necessarily dispositive of the question of whether or not the person is an employee within the bargaining unit. The panel continued that a determination by the Board "may be of assistance" if a dispute was being arbitrated. Clearly this does not constitute a statement that such a determination is dispositive. The panel did state that a determination by this Board that an individual is not an employee within the meaning of the Act is dispositive of the issue because "only persons who are "employees" within the meaning of the Act can be in a bargaining unit." The panel went on to note, however, that persons who are not employees may be entitled to benefits pursuant to the terms of the collective agreement. Since such entitlements would be the subject of arbitration, once again a determination by this Board would not be dispositive of future arbitral awards.

25. The union notes that *London Free Press* was cited with approval in *London Public Library* (1996), 55 L.A.C. (4th) 361 (M.G. Picher). In that case, the union had filed a grievance seeking to have certain newly created "manager" positions included in the bargaining unit on the basis that while the collective agreement excluded certain named "manager" positions, it did not generally exclude managers. The employer had brought a concurrent application to this Board seeking a determination of whether or not the persons in the new positions were "exercising managerial functions" or "employed in a confidential capacity" within the meaning of section 1(3)(b) of the Labour Relations Act, with the result that they would not be employees under the Act. In a preliminary motion, the employer took the position that the board of arbitration was without jurisdiction. The union took the position that it was "the task of the board of arbitration to interpret and apply the provisions of the collective agreement regardless of the determination that might be made by the labour board".

26. The board of arbitration rejected the employer's argument that it lacked jurisdiction to determine the issue. At the same time, the board of arbitration stated it had difficulty with the position advanced by the union. It noted that a board of arbitration's interpretation of a collective agreement must be consistent with the public law. It agreed with *London Free Press* that individuals who were not employees within the meaning of the Labour Relations Act were thereby precluded from being in the bargaining unit. As a practical matter, therefore, it held, the decision in the application before this Board would leave little or nothing to litigate before it. On this basis, it held that it would adjourn pending the determination by this Board.

27. Based on the foregoing, in my view it cannot be said that *London Free Press* and *London Public Library* support the proposition that a determination by this Board on the issue of whether an individual was an employee and fell within one of the two statutorily defined bargaining units would be dispositive of the same issue before a board of arbitration, but they do support the proposition that such a decision would be persuasive. Since, however, a decision of this Board will always be persuasive, in my view, given the preference for resort to arbitration stated in *Hamilton Health Sciences*, this in and of itself is not enough. Some other compelling reason must be shown. In terms of the arguments advanced by the union in this case, at minimum this would require demonstrating that boards of arbitration have come to inconsistent conclusions

with respect to the determination, or will decline to make the determination if requested to do so. In short, at a minimum it must be demonstrated that boards of arbitration require persuading on an issue that can be determined by this Board.

28. Prior to reviewing the arbitral decisions, therefore, it is important to identify what it is this Board could determine if it decided to hear this matter pursuant to section 81. It seems to me that what this Board could determine is simply this:

> Whether or not, notwithstanding any provisions of the collective agreement, these individuals, who are alleged to be employed exclusively to teach academic courses in the Continuing Education department, are employees under CCBA and, if not subject to one of the ten exclusions, part of the academic bargaining unit.

29. With this in mind, I turn to the arbitral decisions. As noted, both parties relied primarily on the review of the arbitral decisions contained in a recent arbitration decision, to which they were parties, written by arbitrator MacDowell. MacDowell divides the cases into two groups: those dealing with the application of the collective agreement provisions to the teaching *work* in Continuing Education by employees who are by virtue of other work clearly members of the academic bargaining unit; and those dealing with the status of the *employees* teaching courses in the Continuing Education department, who are not otherwise members of the academic bargaining unit. With the exception of Mitchnick's *George Brown College* decision, I was not provided with copies of any of these cases and my understanding of them is entirely derivative from MacDowell's description. (Further, the citations given for these cases are taken from MacDowell's award.)

30. MacDowell describes four cases as falling within the first group. In *Fanshawe College* (Bastedo, 1982) the arbitrator held that certain teaching work in the Continuing Education department fell outside the scope of the then workload provisions of the collective agreement. While not entirely clear to me from the description given of the case, MacDowell states that *Conestoga* (Palmer, 1984) reached a similar conclusion. By contrast, in *Canadore* (Brown, 1990) the arbitrator held that certain teaching work in the Continuing Education department fell within the scope of the workload provisions of the collective agreement. This approach was also followed in *Fanshawe College* (Brown, 1996).

31. While, according to MacDowell, these cases conflict, in each of these cases the individual in question was already a member of the academic bargaining unit. It is not immediately apparent how a determination by this Board that other individuals teaching in the Continuing Education department were members of the academic bargaining unit would have affected the outcome of these cases. In any event, there is no suggestion that any argument was advanced in any of these cases which required determination of whether such other individuals were members of the academic bargaining unit.

32. I turn now to the second group. In Mitchnick's *George Brown College* award, the panel held that the individuals teaching exclusively in the Continuing Education department (referred to in the award as "pure Continuing Education teachers") were "not covered by the provisions of the collective agreement as it has been negotiated by the parties". The decision continued:

> Whether ... there are, notwithstanding the full history set out herein, bargaining rights stipulated by the *Colleges Collective Bargaining Act*, that go further so as to include the representation of Continuing Education teachers, and to which not even "estoppel" can apply, is not a matter for a board of arbitration.

33. MacDowell indicates that *Canmore* (Picher, 1996) adopted the conclusion of the Mitchnick award that pure Continuing Education teachers were not covered by the collective agreement. It is not clear from MacDowell's analysis whether any argument with respect to the effect of the CCBA was put to the Picher panel: there is no suggestion that it was. On the material before me, therefore, neither the Mitchnick award nor the Picher award determined whether or not, pursuant to the CCBA, pure continuing education teachers are employees within the academic bargaining unit.

34. MacDowell distinguishes the Mitchnick award and the Picher award on the basis that the individuals in question were teaching non-academic courses, i.e. courses that were not being offered for credit. He notes that by contrast in *Fanshawe College* (Brown, October 2002) the issue was the applicability of job posting provisions of the collective agreement to a full time certificate program offered through the Continuing Education department. It appears that the Brown panel concluded that the collective agreement applied on the basis that the program "cannot be found to fall within the pure or regular form of part-time study within Continuing Education and is not thereby excluded from the terms of the collective agreement". Because of this conclusion, it would not have been necessary for the Brown panel to consider whether it would take jurisdiction to determine if, notwithstanding any provisions of the collective agreement, individuals employed exclusively to work in the program would have been employees under CCBA and, if not subject to one of the ten exclusions, part of the academic bargaining unit. In any event, there is no suggestion that it did so.

35. The MacDowell award then refers to a 2002 decision of arbitrator Knopf: *Algonquin College*. At issue was teaching work being done by various individuals in a program offered by the Continuing Education department. The grievance sought to have the employer bundle the work and post it as a full-time job. The employer took the position that the grievance was not arbitrable on the basis that the work was being done in the Continuing Education department and on the basis that the individuals doing the work were teaching for six hours per week or less (described as "part time" in the collective agreement) or appointed for one or more sessions and employed for not more than twelve months in any twenty-four month period (essentially what is described as "sessional" in the collective agreement) and so would have been excluded from the bargaining unit in any event by virtue of subparagraphs (vi) and (viii) of Schedule 1 respectively.

36. According to MacDowell, Knopf held that even if the individuals doing the work in question fell outside the protection of the collective agreement, the union could still look at the work that they were doing for the purposes of the provision of the collective agreement requiring the employer to bundle work to create and post a full time job. Once again, there is no suggestion that arbitrator Knopf considered whether she would take jurisdiction to determine if, notwithstanding any provisions of the collective agreement, individuals employed exclusively to teach in the program would have been employees under CCBA and, if not subject to one of the ten exclusions, part of the academic bargaining unit.

37. Finally, there is the MacDowell award itself. At issue was work being done by two individuals in the Continuing Education department. The work related to the delivery of for credit courses in the Early Childhood Education "that lead to the same kind of ECE diploma that would be obtained by students taking the same courses in the regular [i.e. academic] day school program" (p. 41). Both of the individuals worked more than 6 hours per week, but not more than 12 hours per week (described as "partial-load" by the collective agreement). This means that, unlike the case before Knopf, the employer could not argue that the two individuals were excluded from the bargaining unit by virtue of subparagraphs (vi) and (viii) of Schedule 1 respectively. As described by MacDowell, however, the grievance did not argue that the two individuals were employees within the meaning of CCBA and part of the academic bargaining unit. Rather, like the case before Knopf, the grievance sought the bundling of the work performed by these two partial load positions and the posting of a full-time position pursuant to Article 2.02 of the collective agreement which specifies that the employer shall give preference to full-time positions. The employer took the position that the two individuals and their work fell outside the ambit of the collective agreement with the result that the grievance was not arbitrable.

38. MacDowell's "discussion" of the case before him starts at page 95 of his award. It seems to me that ultimately he reaches the following conclusions. First, some provisions of the collective agreement apply to teaching work in the Continuing Education department "even when the work is done by someone outside the bargaining unit" (p. 98). Second, the work at issue in the case before him was teaching work. Third, the collective agreement does not expressly exclude someone employed as a teacher in Continuing Education. Within this context, MacDowell observes (at p. 104): "whether that would collide with the CCBA is another matter". Fourth, the collective agreement does not by implication exclude someone employed to teach academic courses through the Continuing Education department. Fifth, the case before him can be distinguished from the cases before Mitchnick and Picher on the basis that those cases did not deal with the delivery of academic courses through the Continuing Education department. Sixth, in the alternative, he declines to follow the decisions of Mitchnick and Picher. For these reasons, MacDowell concludes that the provision giving preference for full-time positions "could conceivably apply", and therefore the grievance was arbitrable.

39. All of these conclusions derive from MacDowell's analysis of the collective agreement: none of them require a determination of whether or not notwithstanding any provisions of the collective agreement, individuals employed exclusively to teach in the Continuing Education department would have been employees under CCBA and, if not subject to one of the ten exclusions, part of the academic bargaining unit.

40. MacDowell does go on to say with respect to the proposition "that someone teaching courses for academic credit, on a full time or partial load basis, in Continuing Education, is 'outside the bargaining unit'", that "quite frankly, it is difficult to see how that position can be maintained with reference to either Article 1.01 [the recognition clause of the collective agreement] or the CCBA." I think it is a fair reading of the case as a whole to say that MacDowell is of the view that such individuals are employees within the meaning of CCBA and fall within the academic bargaining unit described in Schedule 1 to CCBA. However, whether, given his analysis, MacDowell was called upon to make this determination and did so is open to debate.

41. In my view, the following conclusions can be drawn from the foregoing review of the arbitral jurisprudence. First, with the possible exception of the MacDowell award, no arbitrator has determined whether or not notwithstanding any provisions of the collective agreement, individuals employed exclusively to teach in the Continuing Education department are employees under CCBA and, if not subject to one of the ten exclusions, part of the academic bargaining unit. There is, therefore, no conflict in the arbitral decisions on this point. Second, such a determination appears to be largely irrelevant to the issues as framed in the arbitration awards. It is noteworthy in this respect that with the exception of the case before Mitchnick, and possibly the case before MacDowell, there is no suggestion that the union has sought such a determination from an arbitrator.

42. I am not satisfied, therefore, that a determination of this issue by the Board is necessary in order to resolve conflicting arbitral decisions. Whether this Board would exercise its jurisdiction to determine the matter in the presence of conflicting awards therefore need not be addressed, and I expressly decline to do so.

43. Nor am I satisfied that it is necessary for this Board to resolve this issue at this time because boards of arbitration have declined to do so. Although the Mitchnick panel declined to address the issue in 1993, the union did not make an application to this Board at that time for a determination of the issue. Since then the Supreme Court of Canada issued its decisions in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 and *Parry Sound (District) Social Services Administration v. Ontario Public Service Employees Union, Local 324,* [2003] 2 S.C.R. 157. While it is not for this Board to determine the jurisdiction of an arbitrator, I agree with the employer that in light of those decisions it is likely that an arbitrator would conclude that she or he not only had the jurisdiction but the obligation to determine whether an individual was an employee within Schedule 1 or 2 if the issue properly arose in a case before her or him. Indeed, it appears that at least one arbitrator, MacDowell, has indicated a willingness to determine the issue, if he has not in fact already done so. Accordingly, there does not appear to be a need at this time for this Board to assume jurisdiction on the basis that boards of arbitration are declining to do so.

44. In the result, I am not satisfied that there is "any over-riding public policy or remedial opportunity" that makes this Board more appropriate than resort to arbitration at this time. Accordingly, the application is dismissed without prejudice to the union's right to re-apply in the future should there be conflicting arbitration awards or some other circumstance which would warrant such an application.

0631-06-JD; 0632-06-JD; 1782-06-JD; 2014-06-JD; 2368-06-JD International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union 736, Applicant v. **Strabag Inc.;** Ontario Power Generation Inc.; Labourers' International Union of North America, Ontario Provincial District Council; Labourers' International Union of North America; and Labourers' International Union of North America, Local 837, Responding Parties v. Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America and its Local 1007; Electrical Power Systems Construction Association, Intervenors; Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America and its Local 1007,

Applicant v. Strabag Inc., Ontario Power Generation Inc.; Electrical Power Systems Construction Association; Labourers' International Union of North America, Ontario Provincial District Council; Labourers' International Union of North America; and Labourers' International Union of North America, Local 837, Responding Parties v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union 736, Intervenor; Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its Local 18, Applicant v. Strabag Inc.; Ontario Power Generation Inc.; Labourers' International Union of North America, Ontario Provincial District Council; Electrical Power Systems Construction Association, Responding Parties v. Labourers' International Union of North America; and Labourers' International Union of North America, Local 837, Intervenors; Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its Local 18, Applicant v. Strabag Inc.; Ontario Power Generation Inc.; Electrical Power Systems Construction Association; Labourers' International Union of North America, Ontario Provincial District Council;, Responding Parties; Ontario Sheet Metal Workers Conference and its Local 537, Applicant v. Strabag Inc.; Ontario Power Generation Inc.; Electrical Power Systems Construction Association, Responding Parties v. Labourers' International Union of North America, Ontario Provincial District Council; Labourers' International Union of North America; and Labourers' International Union of North America, Local 837, Intervenors

Construction Industry – Jurisdictional Dispute – The applicants alleged an improper assignment by Strabag of certain work at the Niagara Tunnel Project to members of the Labourers – The applicants asserted that tunneling work did not come within the exclusive purview of the Labourers and submitted that there were a number of other trades actively involved in tunneling work – The Board held that it was imperative to consider the context within which the work was undertaken – The Board was not persuaded that the assignment of the work in dispute by Strabag to members of the Labourers was wrong – Assigning the work associated with the construction of the tunnel to members of the Labourers was consistent with both the area practice and the practice of the electrical power systems sector and accorded with the recognized work jurisdiction of the Labourers – In particular, the existence of the "tunnel exception" in the EPSCA agreements and the incorporation of the tunnel schedule from the Heavy Engineering Association of Toronto collective agreement demonstrated that recognition – Applications dismissed

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Denis Ellickson, Jesse Nyman* and *Harlen Bomberry* for the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union 736; *Denis Ellickson, Jesse Nyman, Ron Coltart* and *Mitch Sinclair* for the Millwright Regional Council of Ontario, United Brotherhood of Carpenters and Joiners of America and its Local 1007; *Denis Ellickson, Jesse Nyman* and *Konrad Kot* for Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, and its Local 18; *Denis Ellickson, Jesse Nyman* and *Randy Cook* for Ontario Sheet Metal Workers Conference and its Local 537; *Lorne A. Richmond, Eli Gedalof, Harold Bartlett, Carolyn Hart* and *Mike Popovich* for Labourers' International Union of North America, Ontario Provincial District Council; Labourers'

International Union of North America; and Labourers' International Union of North America, Local 837; *Joseph Liberman, Daniel Leone, David Francis, Ernst Gshnitzer* and *Alexander Herz* for Strabag Inc.; *Helen Daniel* for Ontario Power Generation Inc.; *M. Patrick Moran, Jon Wolfe* and *Max Jackson* for Electrical Power Systems Construction Association

DECISION OF THE BOARD; October 16, 2007

1. The applicants allege the assignment by Strabag Inc. ("Strabag") of certain work at the Niagara Tunnel Project (the "Project") to members of the Labourers' International Union of North America, Ontario Provincial District Council; Labourers' International Union of North America; and Labourers' International Union of North America, Local 837 (collectively, the ("Labourers"), was improper and bring these five applications under section 99(1) of the *Labour Relations Act, 1995*, c. 1, as am. (the "Act") to obtain the work in dispute for their members.

2. The Project is a massive undertaking which involves the excavation of a cut into bedrock some 300 meters long and 24 meters wide, with a depth ranging from 26 meters to 42 meters, the erection of a gantry crane over the cut, the rigging, hoisting, and assembly of a tunnel boring machine in that cut, the erection and assembly of a conveyor system and the boring of a 10.4 kilometre long tunnel 12.7 meters in diameter through bedrock under the City of Niagara Falls. All of the work in dispute was assigned to members of the Labourers. Each of the applicants claims different segments of the work. The work in dispute and the claims made by the applicants are set out below.

3. The decision dated March 29, 2007 in these five applications set out my ruling granting the motion by Ontario Power Generation Inc. ("OPG") removing it as a responding party.

4. In an earlier decision dated October 30, 2006 in four of these proceedings (the application in Board File No. 2368-06-JD had not yet been filed when the Board's October 30th decision was released) the Board, on agreement of the parties, described the work in dispute in considerable detail. Generally, the work in dispute is "The work below grade for the installation of the tunnel at the Niagara Tunnel Project". The parties further agreed upon the description of some 10 distinct elements comprising the "work below grade for the installation of the tunnel".

5. The ten distinct elements of the project carried on below grade for the installation of the tunnel were:

a) Gantry crane assembly

b) Temporary concrete slab for tool crib/workshop

c) Assembly of prefabricated tool crib/workshop

d) Installation of corrugated steel tunnel under southern bench

e) Cast of foundations for gantry crane and overland conveyor

f) Assembly of overland conveyor including steel towers

g) Installation of structural base for ventilation fan and installation of the fan

h) Installation of precast concrete barriers

i) Assembly of backup system

j) Scaffold frame stair tower

Although the work in dispute originally included the installation of the Alimak hoist, Strabag did not install that hoist but instead installed a stair tower for persons to have access to the cut and tunnel entrance. Although the Millwrights and the Ironworkers claimed the work associated with the installation of that hoist, as it was ultimately not carried out, they did not pursue any claims for work in connection with that piece of equipment.

6. The applicants summarized their respective claims for the work assigned to the Labourers as follows:

IRONWORKERS

(a) Reinforcing Rod Steel—tool crib, gantry crane, conveyor, ventilation fan;
(b) Rigging—concrete barriers, tunnel boring machine ("TBM"), corrugated steel tunnel, ventilation fan;
(c) Structural steel erection—workshop and conveyor
(d) Cranes and rails—gantry crane, workshop
(e) Conveyor installation—conveyors

MILLWRIGHTS

(a) Cranes and rails—gantry crane
(b) Conveyor—conveyor
(c) Assembly and maintenance of TBM including hydraulic cylinders, *in situ* machining and assembly of the back-up system;
(d) Installation of equipment—Ventilation fan

CARPENTERS

(a) Formwork and stripping of forms—gantry crane, conveyor, workshop, retaining wall
(b) Scaffolding—scaffold stair tower
(c) Office complex construction workshop

SHEET METAL WORKERS

(a) Sheet metal siding and roofing—workshop
(b) Air grills—workshop office

7. The applicants assert and the responding parties do not seriously contest that much of the work in dispute associated with each of the elements of the project set out above, if carried out at or above grade and not in relation to the construction of a tunnel, would be encompassed by the recognized craft jurisdiction of each of the applicants. For example, the erection and

assembly of a gantry crane, the installation of a conveyor system and its supports, the constructing and stripping of concrete forms, the rigging of material and equipment, and the placing of reinforcing rods within the forms are well defined and accepted areas of work jurisdiction within the electrical power systems sector of the construction industry. Such work would not normally be assigned to Labourers.

8. It is not necessary to review the extensive and comprehensive materials filed by the applicants in support of their claims with respect to the work in dispute, as the responding parties focussed their submissions on the context within which the work in dispute was performed. If the work in dispute had been carried out on a construction project in the electrical power systems sector in Board Area 5 that was not the construction of a tunnel, it is likely that most, if not all, of the work in dispute would have been assigned or awarded by the Board to the trades claiming that work in these proceedings.

9. The applicants assert tunnelling work does not come within the exclusive purview of the Labourers and submit there are a number of other trades actively involved in tunnelling work, including Operating Engineers, Teamsters, Carpenters, Ironworkers and Sheet Metal Workers. Moreover, the applicants claim not all of the work in dispute involved the construction of a tunnel. The applicants assert the theory of the responding parties justifying the disputed work assignments rests on two related but distinct foundations: the work associated with the construction of a tunnel is work within the exclusive jurisdiction of the Labourers and all of the work in dispute involves the construction of a tunnel. The applicants say both foundations are incorrect.

10. The applicants contend the responding parties' characterization of the project as a tunnel is an attempt to apply an "end use" analysis to the resolution of jurisdictional disputes rather than applying the criteria the Board normally uses. The applicants submit that when one looks at area practice, safety, skill and training, economy and efficiency, collective bargaining relationships, and employer practice, the only sensible result is an award in their favour. The applicants also point out much of the work in dispute was performed outside of the tunnel, but below grade. They say whether such work is above, at or below grade is simply not relevant to determining which union should be assigned the work in dispute. The erection of the gantry crane or rails for the conveyor system require the same skills and training whether such work is done in a large excavation or cut below grade or on the surface.

11. The applicants argue the trades have done work in tunnels and refer to the work done in tunnels at the Bruce B and Darlington generating stations. They emphasize that the various elements of the work in dispute requires the same skills and training whether such work, for example the conveyor system or gantry crane, is done in respect of tunnel construction or in a manufacturing plant. They urge the Board not to be taken in by the responding parties' notion of "context" in characterizing the work in dispute. The focus should be on the work and where the trade jurisdiction applicable to that work is clear, as it is in this case, the context within which the work takes place is, according to the applicants, irrelevant.

12. The Board's approach to resolving jurisdictional disputes normally involves a consideration of a number of factors, including area practice, economy and efficiency, employer practice, skills and experience, collective agreements, and trade agreements to determine whether the assignment of work was proper. The Board recognizes that there can and often is a difference

of opinion over whether certain work should be assigned to one union rather than another, with the result that the Board requires the union seeking to obtain the work assignment to establish its entitlement to that work.

13. The applicants urge the Board to examine the merits of their claims without regard to the context within which the work in dispute arises. I am not prepared to do so. In my view, it is significant, if not fundamental, in resolving a dispute over the assignment of certain work to understand how that work came to be assigned and performed. The same work can and often is properly assigned to two or three different trades, depending on the context within which the work arises. For example, in *Babcock & Wilcox Industries Ltd.*, [2004] OLRB Rep. Jan./Feb. 6 (January 12, 2004), the Board determined that although the installation of temporary electrical lighting is work normally assigned to members of the International Brotherhood of Electrical Workers ("IBEW"), the hanging, moving and plugging in of "stringers" (a length of insulated electrical wire with a plug at one end and 10 to 12 light fixtures along its length, with each fixture comprising a light bulb within a cage), was work that could be assigned to the IBEW or to the trade needing temporary illumination, depending on the circumstances at the time the work is to be done. The Board at page 7 described the dispute in the following terms:

> The dispute relates to the stringers: moving them, connecting them to electrical receptacles or extension cords, and hanging them where they are needed. The IBEW asserts that this too is part of a temporary lighting system and their members should have performed the work. Babcock and Wilcox and the Boilermakers assert that the stringers are no different from machines or tools used in the construction process and are properly assigned to whichever trade needs to illuminate its own workspace, in this case the Boilermakers.

The area practice appeared to favour the IBEW but the Board at page 10 put the area practice evidence into context when it wrote:

> I conclude, then, that the area practice is a factor that weighs, somewhat ambiguously, in favour of the IBEW.... The ambiguity that arises in this case is from the reason *why* the assignments were made. It appears from all of the material filed that members of the IBEW performed the work because they were the "user trade" in most situations, or because in a workforce composed of many trades, it was convenient for them to do so. That is, it is not work associated with the skills or craft of an electrician as much as it is work that was assigned to IBEW members for the same reasons that, on fewer occasions, it was assigned to members of the Boilermakers and perhaps other trades. [emphasis in original]

In the result, the Board concluded that although the fabrication and repair of the stringers are at the core of the electrician's trade jurisdiction, the work of plugging and unplugging, handling, locating and relocating stringers is not, and could be assigned to members of the IBEW but could also be properly assigned to the trade needing the illumination for the work it is doing.

14. The Board in *Bruce Power LP*, unreported, Board File No. 1029-02-JD, decision dated September 19, 2002, Q.L. cite [2002] OLRD No. 3159 dealt with a claim by the Labourers' to perform the work of driving stakes into the ground using an electric powered hammer drill where such work was assigned to members of the Carpenters. In that case, the context within

which the work arose was critical to the result. Driving of stakes into the ground with power equipment was work normally done by members of the Labourers. Members of the Carpenters were provided with that equipment to drive stakes and such work was claimed by the Labourers. The Board determined that Carpenters, in the past, had manually driven the stakes into the ground using sledgehammers, but where the ground was impenetrable, Labourers were assigned to operate the electric powered hammer drill to drive those stakes. The Carpenters were provided with the electric power hammers as it was easier, quicker and much more efficient for them to do their work rather than manually lifting and wielding a sledgehammer. The Board determined the work in dispute should be assigned to the Labourers where the stakes were to be driven into rock or other extremely hard surfaces, but that the Carpenters could use the power hammer to drive stakes into the ground where they would have used sledgehammers in the past. That is, the context where the work arose was, in that case, determinative of the correct assignment.

15. The responding parties asserted that many of the claims made by the applicants were not advanced at the mark-up meeting of April 5, 2006 convened for discussion of the assignment of work performed below grade for the installation of the tunnel. They point out that the Sheet Metal Workers did not even attend that meeting, and that the applicants have enlarged the scope of the work they assert should have been assigned to them.

16. The Board has generally considered a union's failure to assert a claim for work at a mark-up meeting fatal to any claim it might subsequently make for such work. In view of my assessment of the merits of the claims made by the applicants, it was not necessary for me to determine whether the applicants had made claims for all of the work in dispute at the mark-up meeting of April 5th, nor whether the Sheet Metal Workers were precluded from asserting their claims by reason by their failure to attend at the mark-up meeting.

17. The responding parties emphasize that all of the work in dispute is devoted to the construction of a tunnel which will ultimately be filled with water. This is not a case, the responding parties point out, where the tunnel is a passage way in which equipment and machinery will be installed. They submit the applicants' examples of their work being done in a tunnel were situations in which they were working in a tunnel to do installations of fuel systems or communication equipment. The applicants do not point to any examples where they were actually assigned to the construction of a tunnel, as opposed to performing the work of their trade within a tunnel. While the Niagara Tunnel where the work in dispute is carried out is very large and is a massive construction project, the work in dispute and the context within which that work is undertaken is still the construction of a tunnel.

18. The responding parties refer to the collective bargaining history in the electrical power systems sector to buttress their position. The work in dispute is being carried out pursuant to the collective agreement between the Labourers and EPSCA. That collective agreement contains what was referred to as the "tunnelling exception". Although it only appears in the Labourers' collective agreement, the "tunnelling exception" was found in the Labourers' appendix to the collective agreements between EPSCA and the Ontario Allied Construction Trades Council ("OACTC"), and later in the collective agreement between EPSCA and Power Council of Unions. The Carpenters and Millwrights were members of both the Power Council of Unions and the OACTC. The Ironworkers and Sheet Metal Workers, although not members of the OACTC, were aware of the tunnelling exception. Under the tunnelling exception in the OACTC collective

agreement, "Classifications and wages for tunnelling shall be as set forth in the wage schedules attached hereto." That was revised in a later OACTC collective agreement to provide:

> Classifications and wages for tunnelling shall be as set forth in the tunnel schedule of the collective agreement between the Heavy Construction Association of Toronto and the Labourers Union.

The tunnelling exception contained in the OACTC collective agreement and continued in the Power Council of Unions collective agreement and currently in the Labourers collective agreement with EPSCA applied to all tunnelling work by having the collective agreement between the Heavy Construction Association of Toronto and the Labourers as the applicable agreement. Under that collective agreement, all work associated with tunnelling is assigned to members of the Labourers.

19. The applicants argued the tunnelling exception related only to the work done by labourers and could not be interpreted to broaden their jurisdiction to impinge on the jurisdiction of the other trades. I disagree. The appendices to the OACTC collective agreement, by virtue of section 4.1 of that collective agreement, were deemed to be part of the collective agreement. That is, all members of the OACTC accepted the trade appendices applicable to each trade. Only the Labourers had a reference to tunnelling work in their trade appendix. It is also significant, in my view, that the OACTC collective agreements, in 1988 and later in 1990 contained a specific reference to tunnelling in the labourers' appendix that provided the classifications and wage rates for tunnelling by reference to Heavy Construction Association of Toronto tunnel schedule. Under that collective agreement, all work associated with the construction of a tunnel is carried out by members of the Labourers. None of the other trade appendices in those collective agreements made any reference to tunnelling. The "tunnelling exception" continued to exist in the Labourers' appendix in the Power Council agreements and remains in place in the collective agreement between the Labourers and EPSCA.

20. While the current collective agreements between EPSCA and the applicants are not binding on the Labourers, and the Labourers' collective agreement with EPSCA is not binding on the applicants, the Carpenters and the Millwrights were parties to and explicitly ratified the OACTC collective agreements, which included the tunnelling exception, and the other applicants, although not members of the OACTC, were aware of the assignment of tunnelling work to the Labourers.

21. The responding parties also point to the Letter of Understanding between EPSCA and the Labourers made with respect to the Niagara Tunnel project that was appended to the Power Council of Unions collective agreement. The parties to that letter agreed there would be no work stoppages while the tunnelling portion of the project was ongoing. While that Letter of Understanding only referred to the Labourers, all members of the Power Council had to approve that letter as it was a part of the Power Council collective agreement. The responding parties contend that the Carpenters and the Millwrights, in particular, were aware of that letter and understood that it only needed to be binding on the Labourers because only members of the Labourers would be assigned to perform tunnelling work.

22. The responding parties emphasize that the Labourers do not claim jurisdiction over all work that is carried out in the tunnels. The installation of services, for example, whether it be

wiring, lighting or the installation of piping or instrumentation, is within the trade jurisdiction of the unions that normally perform such work. It is the actual creation or excavation and finishing of the tunnel that the Labourers assert is within their exclusive jurisdiction. Perhaps the best example of that distinction arose in relation to the earlier Niagara Tunnel project in 1992 in which the Labourers were assigned the excavation or construction of the actual tunnel but did not claim the mechanical or electrical work. The applicants also point out that the 1992 tunnel project did not progress to the point where the work of the other trades was being done so they did not challenge the ultimate assignments made to the Labourers. They do emphasize that, contrary to the assertions of the responding parties, there had been claims made about certain work in connection with the construction of that tunnel by other trades.

23. The parties referred to a number of other tunnel projects undertaken in the electrical power systems sector where the tunnelling work was assigned to the Labourers. The applicants contended that such projects were irrelevant to the issues before me. They claim that the other tunnel projects referred to by the responding parties were on a much smaller scale using much different equipment. And, more importantly, the applicants submit that other trades did work in those tunnels.

24. It is not necessary to analyze the other tunnel projects for purposes of determining the matter before me. Suffice it to say that all the other projects were much smaller and did not involve the assembly and operation of a tunnel boring machine. More importantly, the Labourers were assigned the work associated with the excavation and construction of the tunnel. To the extent other trades were involved in those construction projects, it appears their role related to the installation of equipment for use in the tunnel rather than in the construction of the tunnel.

25. The applicants also submit that much of the work they claim was not carried out underground or within the tunnel, but rather was done in the open cut. They refer specifically to the erection of the gantry crane, the rigging, hoisting and assembly of the TBM, the erection of the conveyor system and the construction of the tool crib. The responding parties assert all the work in dispute was integrally related to the construction of the tunnel and therefore was properly assigned to members of the Labourers.

26. It must be remembered that the description of the work in dispute was work that was carried out below grade after a cut in the subsurface rock had been created. First, the overburden of topsoil and earth to a depth of approximately 12 meters to the rock surface was removed. Following the removal of the overburden, a cut was made in the subsurface rock measuring some 300 meters long and 24 meters wide with a depth of 26 meters at one end and 42 meters at the other. The work assignments for the construction or excavation of the cut were not a part of the work in dispute. The large cut into the rock was the beginning of the tunnel work, which is where the TBM was assembled. The gantry crane was assembled and erected for use in the construction of the TBM as a part of the tunnel excavation. Similarly, the erection of the conveyor system for the removal of debris from the tunnel is directly related to the construction of the tunnel. All of the work in dispute is, by definition, being done below grade and despite the able arguments of the applicants, is an integral element of the actual construction of the tunnel. Indeed, the work in dispute has been characterized by all parties as "the work below grade for the installation of the tunnel at the Niagara Tunnel Project...." The cut in the bedrock in which virtually all of the work in dispute was carried out is, in my view, a part of the actual tunnel. It was constructed so that TBM could be assembled in place to begin boring into the bedrock.

27. The responding parties' emphasize that the context of the work in dispute is integral to understanding the basis for the assignment. The applicants claim for the work rests, in large part, on the assumption that the context is insignificant, and the work itself must be examined in order to assess which trade should be assigned to perform that work.

28. The applicants submitted that even if the Board accepted the approach advanced by the responding parties, their claim to being the only trade to work on the construction of an actual tunnel does not stand up to scrutiny. The applicants refer to the dispute over the assignment of work associated with the creation of the accelerator wall and approach wall to the tunnel entrance. That work was done underwater by divers. The actual work involved the placement of forty-eight ton pre-cast blocks into the river, with concrete poured through pipes to seal the area between the blocks and the river bottom. The divers positioned the blocks and adjusted the jacks under the blocks. They also moved the pipe through which the concrete was poured. That underwater work was initially assigned to members of the Labourers. The Carpenters claimed the work as it was being done underwater by divers. Ultimately, the issue was settled with the parties agreeing that "diving work…is the exclusive jurisdiction of the Carpenters' Union."

29. There is no doubt that the work done by the Carpenters in respect of the tunnel entrance was work associated with the construction of the tunnel. Nevertheless, the context within which that work was performed was, in my view, determinative of the work assignment issue. The parties to that dispute agreed that when the work was done by divers it came within the exclusive jurisdiction of the Carpenters despite the actual work involving the placement of pre-cast blocks and the handling of pipes for the pouring of concrete. It seems to me it would be quite unusual for a contractor bound by collective agreements with both the Carpenters and the Labourers to assign the placement of forty-eight ton pre-cast concrete blocks and the handling of pipes or troughs through which concrete is being poured to members of the Carpenters rather than members of the Labourers.

30. The approach taken by the Carpenters and the Labourers with respect to work done by divers under water is, I believe, analogous to the approach taken by the responding parties to the work done in respect of tunnel construction. I am satisfied that all elements of tunnel construction work carried on either underground or, in the case of a massive tunnel project that required the excavation of a large cut below grade to enable a tunnel boring machine to be assembled and operated, both underground and in the open, but below grade, is work that has been traditionally assigned to members of the Labourers, in the electrical power systems sector throughout the province of Ontario, and particularly in Board Area 5.

31. Moreover, I am of the view that the work associated with the construction of a tunnel is recognized as being within the work jurisdiction of the Labourers. The existence of the tunnel exception in the EPSCA agreements and the incorporation of the tunnel schedule from the Heavy Engineering Association of Toronto collective agreement demonstrate that recognition. While the size of the Project undertaken by Strabag is unprecedented and the tools and equipment, for example, the tunnel-boring machine, are far larger than the tunnelling equipment operated by members of the Labourers in other tunnelling work, the nature of the work being done remains similar. The assembly of the TBM and the erection of the gantry crane was done in or at the cut, below grade, as a part of the tunnel construction. The gantry crane was not erected to be used for some other purpose not related to the construction of the tunnel, but rather was used for the erection and assembly of the TBM. I accept, as the Labourers argued, that the TBM is a "tool of

the trade", as it is being used to bore the tunnel, and in the course of doing so, generates debris and waste. The conveyor system operates continuously with the TBM to transport the materials from the machine, out of the tunnel and the cut to a storage area above grade. The conveyor system, as one continuous operation, is an integral part of the tunnel construction. That system, the TBM and the gantry crane are integral to the efficient and safe construction of the tunnel, and in that respect, properly elements of the work jurisdiction of the Labourers.

32. The Board in *Kel-Gor Limited*, [2004] OLRB Rep. Sept./Oct. 956 (October 20, 2004) dealt with a claim by the Bricklayers Union with respect to the installation of ceramic fibre blankets between the inner and outer plates of a large boiler. The Bricklayers asserted that the work in dispute involved refractory materials and was a form of refractory work and therefore at the core of its jurisdiction. The Insulators Union, to whom the work had been assigned, submitted the work in dispute was the application of thermal insulation to a mechanical system. The contractors assigning that work determined that refractory work on combustion equipment was properly assigned to members of the Bricklayers while the application of thermal insulation to mechanical components of a mechanical system should be assigned to members of the Insulators. The Board at page 960-61 made the following comments and observations relating to the assignment of the work in dispute in that case:

> 17. ...a boiler does not generate heat; rather it uses the heat generated in a firebox to create steam. The installation of ceramic fibre blanket material in a firebox used to heat a boiler is clearly work at the core of the applicant's [Bricklayers'] jurisdiction. The boiler is a mechanical apparatus and part of a mechanical system, distinct from the components that generate the heat the boiler uses. The distinction between the mechanical system (boiler) and the thermal generation system (combustion equipment) was adopted by Kel-Gor when it subcontracted the work. Kel-Gor engaged a subcontractor bound by a collective agreement with Local 23 to perform the refractory work on the combustion equipment and engaged Summit to perform the insulation work on the mechanical system that included the boiler.
>
> ...
>
> 21. More important, however, is a consideration of the respective cores of the craft jurisdictions of the applicant and Local 95. The work in dispute was done in relation to a boiler, an element of a mechanical system, rather than in relation to a firebox. The type of equipment on which the work in dispute is performed is, in my view, more significant than the nature of the material used in doing that work since the same construction material can have many different uses and applications. Indeed, with new technologies and new materials being developed, linking a construction union's craft jurisdiction to a type of material used in the construction, as the applicant had suggested, might well blur the traditional lines between the crafts even more than they are blurred already. I therefore placed little weight on the fact that the ceramic fibre blanket material installed in the boiler had refractory properties and was used to protect the integrity of the metal shell of the boiler. It was far more significant to me that the ceramic fibre blanket material, besides having a refractory use, was installed in a boiler, an integral part of a mechanical system. Therefore I am satisfied that the work in dispute comes within the core of the craft jurisdiction of Local 95.

The Board in *Kel-Gor Limited* examined the work in dispute in context. Similarly, in this case, it is necessary to assess the work, not as isolated, discrete elements, but in the context of work that is integral to the construction of a tunnel.

33. Strabag, as a new employer to the province of Ontario, does not have an "employer practice" to rely upon in support of its assignment of the work in dispute to the Labourers. It is clear, however, that its preference is to have the work in dispute done by members of the Labourers. The area practice with respect to tunnelling work does favour the Labourers, and while the Labourers have in the past installed ventilation systems as a part of their tunnel construction work, significant elements of the work in dispute, although associated with and a part of tunnel construction, had not been performed previously in connection with the creation or construction of a tunnel in the electrical power systems sector. That is, the responding parties have not demonstrated that either the assembly of a large TBM, the hoisting and rigging of the components of a TBM, the erection of a gantry crane (and the work associated with its installation and erection) and the installation of conveyor system had been done previously in respect of tunnel construction. Thus, the applicants certainly had reasonable grounds for claiming jurisdiction over such work, despite it being carried out in relation to tunnel construction. Moreover, as I had said at the outset, much of the work in dispute, if examined without consideration of the context within which the work was undertaken, would properly be assigned to the applicants.

34. The Labourers emphasize their skill, ability and safety considerations in relation to the tunnelling work, and economy and efficiency. As the applicants point out, much of the work in dispute was carried out in the cut rather than within the tunnel shaft itself rendering the Labourers' submissions with respect to the training and hazards associated with working underground much less relevant to the determination of the issue. Nevertheless, as I had indicated earlier, the cut was a part of the tunnel, and therefore the work done in the cut was done in relation to the tunnel.

35. Although there was much to be said in favour of the applicants' claims, I have been persuaded that the project giving rise to the work in dispute is the construction of a tunnel. It is imperative that the Board, in assessing the claims made by the applicants and the Labourers for the work associated with the construction of a tunnel, consider the context within which the work is undertaken. Moreover, despite the massive scale of the project where the traditional craft work of the applicants becomes quite visible, when such work is done in relation to the construction of tunnel, it has been assigned to members of the Labourers in Board Area 5 and elsewhere in the electrical power systems sector. The evolution of the collective agreements in the electrical power systems sector show that tunnelling work was viewed, by at least the members of the OACTC, as a discrete type of construction work, undertaken principally by contractors employing members of the Labourers.

36. In the result, the applicants have not persuaded me that the assignment of the work in dispute by Strabag to members of the Labourers was wrong. Rather, having the work associated with the construction of a tunnel assigned to members of the Labourers was consistent with both the area practice and the practice within the electrical power systems sector and accorded with the recognized work jurisdiction of the Labourers. Therefore, the Board is not prepared to disturb the assignment of the work in dispute to members of the Labourers.

37. These applications are dismissed.

4015-06-ES Mustafa Daginawala, Applicant v. **Supply Chain Management Inc.**, and Director of Employment Standards, Responding Party

Employment Standards – Wilful Misconduct – The employee sought review of an ESO's refusal to issue an Order to Pay – The employer had a written policy which included health and safety requirements – A progressive disciplinary model was used to address an employee's failure to comply with the policy – Upon the employee's third disciplinary notice, he was advised that future violations of the policy could lead to termination – The employee violated the policy a fourth time by altering the scene of, and failing to report, an accident – Video surveillance evidence was considered – The Board assessed the employee's failure to comply with company policy and found his acts amounted to wilful misconduct – Application dismissed

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Mustafa Daginawala* appearing on his own behalf; *Andrew Ashenhurst, Jon Marion, Arthur Smith* and *Evan Rousseau* appearing for the responding party employer.

DECISION OF THE BOARD; October 2, 2007

1. This is an employee application under the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended ("the Act") for review of the refusal to issue an Order to Pay.

Background

2. The Employment Standards Officer determined that the applicant, an employee of more than 12 years, was terminated in June 2004 as a result of wilful misconduct when he modified an accident scene for the purpose of concealing his contribution to the accident. Consequently, the Officer determined that Mr. Daginawala was not entitled to notice of termination, termination pay or severance pay.

3. The applicant takes the position in this application that he was not at fault with respect to the accident, and did not modify the accident scene. The responding party ("the company" or "SCM"), on the other hand, contends that the applicant knowingly breached the company's safety rules, which justified his termination without notice or severance pay, and covered up the accident scene, which also warranted his termination without notice or severance pay.

The Evidence

4. Two witnesses testified on behalf of SCM: Arthur Smith, the company's current National Maintenance Manager, who was the Maintenance Manager of SCM's Mississauga distribution warehouse at the time of the events in question; and Jon Marion, the company's HR Manager for the Mississauga site.

5. Mr. Daginawala testified on his own behalf.

The company's warehouse operation and its workplace rules, policies and procedures

6. The Mississauga distribution warehouse covers over a million square feet and houses up to $60 million worth of merchandise. Surveillance cameras are set up throughout the warehouse for the purpose of promoting safe work practices and deterring theft. During its busy periods, the warehouse employs up to 800 employees. Much of the work activity involves the movement of goods with battery-powered material handling equipment ("MHE") such as reach trucks, order pickers, and so forth. Mr. Daginawala's main role as Battery Change Team Member ("BCTM") was to remove spent batteries from the MHE and install fresh ones.

7. The company has established written policies in its Team Member Handbook, including health and safety policies. Mr. Daginawala signed an acknowledgement on October 30, 2003 that he had received a copy of the handbook, and that it was his responsibility to familiarize himself with its contents and abide by them. Furthermore, he acknowledged that failure to comply with the policies in the handbook is cause for discipline, up to and including termination.

8. The health and safety policies in the handbook stress the importance of employees immediately reporting injuries, accidents, unsafe conditions, and damage or defects in equipment. One provision in the handbook which is highlighted for special attention reads:

> All accidents, no matter how minor, must be reported immediately to a Team Leader or another member of the Management Team. Failure to report an accident or an injury will result in corrective action. Equipment involved in an accident must not be moved or used until the investigation is completed.

9. On October 8, 2004 Mr. Daginawala also signed a Job Safe Practice document dealing with the operation of MHE.[1] The Job Safe Practice sets out the rules for such operation, and includes a provision which states:

> No person shall, except for the purpose of saving life or relieving human suffering, interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so [sic] to do so has been given by the appropriate management representative.

10. The company has a joint health and safety committee which carries out the usual functions of such a committee under the *Occupational Health and Safety Act*. In addition, SCM has set up a MHE Safety Review Team, consisting of two managers and two non-management staff, which reviews all accidents and incidents for the purpose of determining fault or no fault. If a worker is found by this review team to be accountable for the accident, the report of the review team is remitted to the worker's supervisor for determination of the appropriate level of discipline, if any. Of course, if the worker is found by the review committee not to be responsible for the accident, no further action is taken.

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[1] Part of the applicant's responsibilities as a BCTM is to operate the various types of MHE for the purpose of bringing the MHE into the battery change area where the Battery Bulls are located.

11. SCM utilizes a progressive disciplinary model. Minor initial disciplinary infractions of company policy are dealt with through the establishment of employee development plans. However, repeated infractions lead to documented disciplinary warnings, ranging from Level 1 to Level 3. Level 3 discipline involves suspension without pay. All levels of formal discipline warn of possible termination.

12. There is an avenue of appeal for workers disciplined as a result of the finding of the MHE Safety Review Team. It works much like a typical grievance procedure under a collective agreement. The aggrieved employee makes a written appeal to his or her manager. If the appeal is denied, it may be referred to the Operations Manager, and further to the warehouse's General Manager, or at the option of the employee, to a panel of two, consisting of a manager and a human resource representative. The panel is referred to as "TMAP". Decisions of the General Manager or TMAP are final.

The applicant's duties and responsibilities

13. The BCTM position is a relatively new one.[2] BCTMs use what are known as Battery Bulls located in the Battery Change Area to remove spent batteries from, and insert freshly charged ones on, MHE. The batteries weigh between 2000 and 3000 pounds each. Not surprisingly, then, the Battery Bull is a large automated machine, about 10 feet in width and 25 feet in length, operated by the BCTM from a front end platform. It is capable of moving along a guide tracking system several meters in length, bolted to the floor.

14. The BCTM is required to take the following steps in the battery change process[3]:

i. park the MHE in a parallel position adjacent to the Battery Bull;
ii. prepare the MHE for the battery change by setting the forks of the MHE on the ground, and unplugging the battery connection;
iii. enter the Battery Bull's operator's platform and secure safety harness before starting the Battery Bull;
iv. line up the MHE battery housing with one of two, independently operated, roller beds;
v. line up a magnet on the Battery Bull with, and attach it to, the spent battery;
vi. activate a switch to pull the battery from the MHE onto the roller bed, just slightly past the half-way point on the roller bed;
vii. activate a lever to lift the roller bed slowly with the battery on it;

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[2] Before he became a BCTM in March 2004, the applicant had been employed with the company for about 10 years in another capacity.

[3] The procedure is set out in a document dated October 30, 2005, in which Mr. Daginawala acknowledged in writing that he had received training. My description of the process is merely a summary of the portions of the written procedure relevant to the facts in this matter.

viii. de-activate the magnet, and manipulate another lever to pull the battery from the roller bed onto the middle of the Battery Bull;

ix. lower the roller bed, enabling the Battery Bull to "travel" along a set of tracks to retrieve a fresh battery from the battery charging stand, and place it on the other empty roller bed, in much the same way as the spent battery is pulled from the MHE, that is, by activating the magnet and the various levers in order to locate the fresh battery in the middle of the Battery Bull;

x. send the Battery Bull on its tracks to line up the spent battery with the newly vacated charging stand, and through the manipulation of levers, propel the spent battery along the rollers into the charging stand;

xi. activate the charger;

xii. align the fresh battery with, and place it into, the MHE battery compartment.

xiii. park the Battery Bull in its designated spot, and prepare the MHE for use by plugging in the battery, starting the MHE and parking it in an aisle for pick-up by its driver.

It is apparent from the description of the above procedure that, at some point, it is contemplated that a spent battery will be sitting on one roller bed in the middle of the Battery Bull, and a fresh, recharged battery will be sitting in the middle of the other roller bed. There is a safety gate on either side of the Battery Bull's two roller beds. When the Battery Bull's main switch is in the automatic position (which it normally is), the gates will be activated automatically to rise and to descend at the appropriate times by the magnet used to pull and push the batteries. The gates rise about one quarter of an inch, and prevent the battery on the roller bed from falling off the Battery Bull. The gates can also be raised or lowered independently by the BCTM by placing the Battery Bull's main switch in manual mode.

15. It probably goes without saying that the handling of large, heavy, acid-filled batteries poses certain hazardous risks which need to be managed closely. The sheer weight of the batteries is a crushing hazard. The acid within them would pose both an environmental and burn risk if it were to spill onto the shop floor. And if the battery cell itself is damaged, there is a risk of an electric "shorting" hazard in the recharging process. Accordingly, the company has adopted fairly rigorous screening/testing requirements for the hiring of new BCTMs. Moreover, new BCTMs receive substantial hands-on training by more experienced staff, usually lasting about one week. And of course, there are the written procedures described above, with which the BCTMs must become familiar.

16. Of the 50 to 60 daily battery changes performed every day, Mr. Smith was aware of only three instances of falling batteries from the Battery Bull. Two of those involved Mr. Daginawala, and the third incident was before Mr. Smith's appointment as the Maintenance Manager, involving an employee who no longer works for SCM.

The applicant's disciplinary record

17. Mr. Daginawala's disciplinary record, on which SCM relied in terminating him, included two instances for which the applicant was subjected to the imposition of development plans. I heard no evidence about the specifics of those incidents.

18. Mr. Daginawala also received a Level II disciplinary notice on November 8, 2005 as a result of his operation of a MHE known as a clamp truck. Mr. Daginawala caused some stacked boxes of televisions to fall over, an accident for which he was not found at fault by the MHE Safety Review committee. He was, however, found culpable for having moved his clamp truck after the accident, for the purpose of advising a supervisor of the incident, thus impairing its investigation. The Level II warning was subsequently downgraded to Level I as a result of Mr. Daginawala's appeal of another disciplinary warning issued on October 19, 2005.

19. The next incident for which the applicant was disciplined occurred on December 27, 2005. It involved a collision of a piece of equipment on a MHE the applicant was driving with a guard pole. The applicant was found culpable by the MHE Safety Review committee for the collision and for improperly completing a routine MHE checklist. On January 9, 2006, SCM issued the applicant a Level III warning and one-day suspension. This too was later reduced to a Level II warning.

20. On March 6, 2006, Mr. Smith issued a Level III disciplinary notice to the applicant for attempting to force a battery into a MHE using the Battery Bull. The force of the contact caused the MHE to hit the wall of the Battery Change Area, and caused the battery to fall on the floor. Mr. Smith imposed a one-day suspension, which he credited as having been served in respect of the previous down-graded Level II discipline of January 9, 2006. However, the March 6 Level III discipline was not downgraded to Level II. Moreover, it contained the following:

> We want to make it clear that this is your final warning – your job is in jeopardy. Be advised that any further incidences of this nature or any non-compliance with the Supply chain Management's Standards of Conduct will result in progressive corrective action up to and including the termination of your employment.

The events of June 19, 2006 and afterward

21. On June 19, 2006, Mr. Daginawala had another mishap in the course of operating the Battery Bull, which was recorded on video and played at the hearing in this matter. A battery made contact with the floor after partially falling off the Battery Bull roller bed. The applicant was attempting to service two MHEs simultaneously, one on each side of the Battery Bull, and he had placed two batteries on the same roller bed, one of them spent, the other a fresh re-charged battery. The latter fell partially from the roller bed on to the floor. The video shows that, upon discovering the fallen battery, Mr. Daginawala initially appeared at a loss as to what to do for a few seconds. Then he proceeded to put the remaining spent battery back into the MHE from which he had pulled the battery. To do so he had to lift the roller bed slightly, which caused the fallen battery to lift up but not to fall off the roller bed entirely. Immediately after doing so, he left the Battery Change Area to notify his superiors of the accident. According to the written report of Sham Singh, a Maintenance Department Team Leader, the applicant came to the office reporting a problem with the Battery Bull, upon which Mr. Singh investigated and discovered the dropped battery. He asked Mr. Daginawala what happened, and he responded that he was following the battery change procedure and did not know what had happened. Mr. Singh then requested of the Loss Prevention Department that photographs be taken of the scene.

22. Mr. Smith became aware of the incident very shortly after its occurrence. He spoke to the applicant about what had happened. Mr. Daginawala was in distress, and had no coherent explanation. His unedited, hand-written statement, taken shortly after the accident, reads:

> As per the procedure I was changing the Batteries. I notice after the battery one end fell on the ground.

23. Mr. Smith thought the best course of action was to send Mr. Daginawala home, due to his anxious state. Mr. Smith had drawn no conclusions at this point about the cause of the accident. He did not know (nor did Mr. Singh, apparently) that the applicant had placed two batteries on the same roller bed, and he did not know that after Mr. Daginawala discovered the fallen battery and before he reported the incident, he placed the spent battery back in the MHE from which it had been pulled. That, of course, became apparent when Mr. Smith viewed the video of the accident shortly after the applicant left the workplace. After watching the video more than once, Mr. Smith concluded that Mr. Daginawala had placed two batteries on the same roller bed in contravention of procedure, and had altered the accident scene. He concluded that the applicant had engaged in misconduct.

24. Later on the morning of June 19, Mr. Singh arranged for a maintenance inspection of the Battery Bull. Kevin McElroy, a licensed millwright, inspected the Battery Bull. He tested the Battery Bull's range of motion, the magnet and the safety gates, all of which he found in good working order. He stated in his report that, "[t]his machine has nothing wrong with it, working the way it should.".

25. The following day, June 20, 2006, Mr. Daginawala was summoned to a meeting with Mr. Smith and Evan Rousseau, an HR Coordinator. Mr. Rousseau took notes of the meeting, which were entered into evidence during the hearing. Mr. Daginawala did not take issue with the accuracy of the notes. The notes indicate that, in response to Mr. Smith's inquiry as to how the battery fell out of the Battery Bull, Mr. Daginawala said:

> I am unsure. I was pulling the battery and the one in the bull just fell off. Sometimes people call you and you turn losing focus. I don't remember anything else.

The meeting was interrupted to allow the applicant to see the video of the accident. After the video was played, Mr. Evans recorded Mr. Daginawala's reaction as follows:

> I realise [sic] I could have called management sooner. I do not know what was going on in my mind at the time. I have been driving for many years but calling did not enter his mind. The rollers activated. They are the problem. Maybe he didn't have the switch in the right position. The stop flap was not up. Maybe I moved the roller the wrong way. I know I have a habit of not stopping when something happens.

26. Mr. Smith testified that he was not impressed with the applicant's explanation, and that as far as he was concerned, Mr. Daginawala's integrity was in ruins. However, Mr. Smith did not make the decision to terminate the applicant. That was left to the General Manager, the Operations Manager, the HR Manager and the Loss Prevention Manager, and they did not take action until the MHE Safety Review committee determined that Mr. Daginawala was culpable for

the accident. The HR Manager, Jon Marrion, testified that he and his colleagues reviewed the video footage of the incident, and determined that the applicant attempted to hide his involvement in it. Consideration was given to transferring the applicant to another department, but the feeling was that all trust had been broken, and that Mr. Daginawala was not responding to previous warnings.

27. By letter dated July 4, 2006, the Operations Manager, Emilio Cicero, informed the applicant of his termination. Mr. Cicero cited as reasons for the dismissal the placement of two batteries on the same roller bed and the applicant's failure to immediately report the accident before re-inserting the spent battery into the MHE. Mr. Cicero's letter referred to the explicit previous Level III's last-chance warning, as well as the other incidents which I have described above.

28. In the course of his testimony, Mr. Daginawala stated that he became very confused and nervous immediately after the battery fell off the Battery Bull on June 19, 2006. He had a lot on his mind at the time, and was feeling very stressed about his job and about the lack of prospect for promotion. On the other hand, he explained that the reason he placed the spent battery back in the MHE after the charged battery fell off the Battery Bull was to ensure that nothing further might happen to the spent battery. In other words, he was motivated by health and safety concerns, and a fear that the spent battery might also roll off the Battery Bull.

29. Mr. Daginawala suggested that when he was trained by more experience co-workers to operate the Battery Bull in 2004, his trainers were placing more than one battery on the same roller bed. One such trainer commonly placed four batteries on the same roller bed. Mr. Daginawala said he was not comfortable following that practice, but that he commonly placed two smaller batteries together on a roller bed. He admitted that he did not disclose this to anyone in the course of the investigation into the final incident that preceded his termination, but pointed out that no one asked him about it.

Analysis and Conclusions

30. Generally, the Act requires employers to provide notice of termination or termination pay, and in certain circumstances, severance pay, to terminated employees.[4] However, one exemption to this requirement is in circumstances where the employee in question engages in wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.[5] The issue in this case is whether Mr. Daginawala falls within the parameters of this exemption.

31. In my view, having regard to the evidence in its entirety, Mr. Daginawala engaged in wilful misconduct that was not trivial and certainly not condoned by the company. I am not certain that putting two batteries on the same roller bed was wilful misconduct. The applicant contended that he thought this was appropriate, given the similar conduct of his co-workers. While I have some doubt about that contention, particularly given that the applicant did not produce any witnesses to corroborate his evidence and, further, given that the company's written

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[4] See section 54 and section 64 of the Act.

[5] See paragraph 3 of subsection 2(1), and paragraph 6 of section 9, of *O.Reg 288/01* passed pursuant to the Act.

procedure for the operation of the Battery Bull implies that only one battery ought to be placed on a roller bed, I am prepared for the purposes of this decision to give the applicant the benefit of that doubt.

32. I am also not completely certain that Mr. Daginawala was attempting to sabotage the investigation into the final incident when he put the spent battery back into the MHE. It may be that he was truly concerned about the stability of that battery, although there was no evidence that it was in a precarious position, and furthermore, the act of placing the spent battery back in the MHE posed an obvious risk to the already fallen battery in that the applicant had to move the roller bed in an upward position. The applicant's action probably constituted a greater safety risk than if he had just done nothing further.

33. What I am quite certain of is that Mr. Daginawala, whatever his motivation, knowingly altered the scene of the accident after the fact. That is, he knew of the clearly articulated rule outlined in the Job Safety Practice about not introducing any changes into an accident scene, and yet he made changes to the accident scene on June 19, 2006. He also did not immediately report the accident. It is true that no more than about a minute passed between the time the battery fell and Mr. Daginawala made his way to report the incident. However, in that intervening period, the applicant took allegedly corrective steps he was prohibited from taking except to save life or relieve against human suffering. In that sense, he delayed reporting the accident. He acknowledged as much in his interview with Mr. Smith and Mr. Rousseau when he admitted he should have called management sooner and that he had a tendency of "not stopping when something happens".

34. Compounding Mr. Daginawala's misconduct is the fact that he had previously and knowingly altered the scene of an accident, when after toppling the television sets with his vehicle, he drove away from the accident scene. He was disciplined for it and warned that further incidents of that kind could result in more severe discipline, including termination.

35. In *Martin Pet Foods*, [2002] OLRB Rep. Jan./Feb. 41 (February 18, 2002), the Board articulated the standard to be met by an employer seeking to establish that an employee's failure to comply with a company rule has engaged in wilful misconduct. First the rule must be clear and unequivocal. I find that the rules against changing the scene of an accident and reporting accidents immediately meet that test. Second, the rule must have a substantial bearing on the employment relationship. In my view, the rules in question in this case bear on the question of health and safety, and thus directly on the employment relationship. Third, the rule must have been communicated to the employee. The company did that by providing Mr. Daginawala with an employee handbook containing the rules. Fourth, the employee must know or ought to know in advance that a violation of the rule could result in his termination. In this matter, the company rules specifically mention the possibility of termination, and furthermore, the applicant was previously disciplined for leaving an accident scene with his truck. That discipline warned of the possibility of termination. Fifth and finally, the rule must not require the employee to do anything illegal or unsafe. SCM's rules not only do not jeopardize the safety or well-being of the employees, they seek to protect them.

36. The company has met all five criteria in the *Martin Pet Foods* decision. I conclude, therefore, that the applicant altered the scene of the accident with full knowledge that he was prohibited from so doing, and thereby delayed reporting the accident. Those are wilful acts in

breach of clearly established rules. They amount to wilful misconduct that was not trivial and was not condoned by the employer, within the meaning of the Act.

37. For these reasons, the refusal of the Officer is hereby affirmed, and the application is dismissed.

4338-02-U (Court File No. 382/05) Frank Scaduto, Applicant v. United Food & Commercial Workers Local 206, Ministry Of Labour, The Ontario Labour Relations Board and Ministry Of The Attorney General Of Ontario, Respondents

Duty of Fair Representation – Judicial Review – Reconsideration – The Board exercised its discretion not to inquire into a duty of fair representation complaint when it ascertained the complaint was virtually identical to an earlier application that the applicant had withdrawn – The Board subsequently dismissed the applicant's request for reconsideration – On judicial review, the Court found the Board had acted reasonably and within its jurisdiction – Application for judicial review dismissed

Superior Court of Justice (Divisional Court), Jennings, Gans and Coats JJ., September 17, 2007

In his argument in support of this application for judicial review, applicant's counsel submits that in denying the request for a hearing to reconsider its decisions not to enquire into this complaint. The Board denied to the applicant his right to natural justice.

For the reasons set out in paragraphs 56 through 62 of the factum of the Union, we disagree.

The Board had a discretion to reconsider its decision pursuant to s.114(1) of the statute. In the exercise of that discretion against the applicant on the basis that his claim to the Board was substantially the same as his earlier application which he had withdrawn. The Board was acting reasonably and without its jurisdiction.

The Board does not seek costs. Costs of the respondent, United Food and Commerical Workers fixed at $4,000 payable forthwith.

This application is dismissed.

0618-06-U; 0620-06-U (Court File No. 261/06) Amalgamated Transit Union Local 113, Applicant v. Toronto Transit Commission and OLRB Respondents

Judicial Review – Lock-out – Natural Justice – Practice and Procedure – Reconsideration – Strike – The TTC brought an application for a declaration that its employees were about to engage in an illegal strike at the start-up of the morning shift – The Board provided notice to the union and counsel who normally acted for the union of a 5:30 a.m. hearing by conference call to deal with the application, leaving telephone messages and sending a facsimile to the union's office – The Board held that the union had been served with the application and had received notice of the hearing – The Board ordered the employees to cease and desist from any further engagement in the unlawful strike – The ATU alleged the TTC had illegally locked out its employees, and also sought reconsideration of the earlier cease and desist order (the Whitaker decision) – The Board held that no lock-out was taking place, and stated that the parties could have had their differences considered through the grievance and arbitration process – The Board also found that the illegal strike was continuing – The Board stated that even if it were to find that the union had not received notice of the earlier hearing, it was not appropriate to vary the Board's order – The union had full opportunity to make the submissions it would have been able to make earlier – Lock-out application dismissed; reconsideration of strike application denied – On the judicial review, the union took the position that the Board exceeded its jurisdiction by conducting an "expedited hearing", without authority and that natural justice was breached by proceeding without the union in the first hearing and by unfairly limiting the union's presentation time in the second hearing – The court noted that context is often the balancing ingredient when weighing the undeniable tension as among the tribunal's ability to control its process, the duty of fairness and the degree of deference courts should afford the exercise of the tribunal's discretion – The court found that the Board was not proceeding pursuant to its authority under section 110(18) and Rule 41, but rather pursuant to the abridgement provisions in its general Rules – In derogating from the norm through abridgement, the Board may only vary times, not eliminate them; it must give notice of a hearing, although it may vary the manner of doing so; it must conduct a hearing, although it may allow it to proceed electronically; it must allow the parties full opportunity to present evidence and make submissions, although it may direct how this is to be done, including orally or in writing, whether by evidence admissible in court of law or not – The court reviewed the factors to be applied in assessing the Board's duty of procedural fairness as set out in *Baker*, concluding that the Board merits a high degree of deference with respect to the fairness of its procedural decisions – The court found that the circumstances, in this case, were extreme and warranted quick intervention and that the Board's abridgement of times and procedures, and its finding of proper service and notice were appropriate in the context of the situation and did not operate as a breach of fairness – The court found nothing wrong with limiting the time for presentations in the second hearing and that the union had sufficient and fair opportunity to present its evidence and make its position clear – Finally, the court found that if there was a deficiency of fairness in the initial hearing, it was cured by the reconsideration hearing – Application for judicial review dismissed

Superior Court of Justice (Divisional Court),Ferrier, Whalen and Cumming J.J., October 1 , 2007.

I. General

[1] The applicant Amalgamated Transit Union, Local 113 ("the Union") sought judicial review of two decisions of the Ontario Labour Relations Board (the "Board") granted May 29, 2006. It asked that the orders arising from both decisions be quashed, with costs, if successful.

[2] For the reasons that follow, the application is dismissed.

II. Factual Background

[3] The Union holds bargaining rights for approximately 8,500 persons employed by the Toronto Transit Commission ("TTC"), including maintenance workers and cleaners. The TTC delivers public transportation to the several million people in the Greater Toronto Area through the operation of an extensive bus, electric streetcar and subway system.

[4] In September 2005, the TTC decided to re-orient subway station cleaning operations to night time, when user traffic would interfere less. In doing so, it was adopting a system already used on a part of the subway line. The modification necessitated re-assignment of shifts, locations, hours of work, and days off for a number of employees. Some positions would also be eliminated through attrition. As a result, a number of maintenance staff would be assigned work at times and places personally less desirable than previously enjoyed. This was particularly so for workers who had improved their situations over time through seniority.

[5] The Union regarded the affected jobs as "Variable Positions," which had been the subject of considerable dispute before and during the 2005 collective agreement bargaining process. It claimed it had compromised its position by withdrawing a grievance, accepting a negotiating process and entering into the 2005 collective agreement on the understanding the TTC would not significantly alter the number of Variable Positions during the term of the new agreement. To the Union, the proposed changes amounted to bargaining in bad faith.

[6] The new assignments were to be implemented through a sign up process. The collective agreement required the TTC to notify the Union of the "Master Sign-Up," and the two parties were then to jointly implement it with employee input according to seniority. The TTC notified the Union on September 19, 2005, and the Union responded on March 17, 2006, that it did not agree and would not participate. The Union then informed its members of its position, and advised them not to participate either.

[7] On May 3, 2006, the TTC notified the employees that the "Master Sign-Up" was to start on May 8, 2006, and on May 5, 2006, warned them of the potential consequences of taking part in work stoppages.

[8] On the appointed date, and without Union involvement, the TTC assigned over 700 maintenance department employees to new positions. The large majority of affected employees did not participate in the process, so the TTC assigned them as best it could and designated Sunday, May 28, 2006 as the start-up date.

[9] When the day arrived, however, maintenance staff started calling in sick or otherwise failing to report for work. By midnight, picket lines had been established and other employees

were refusing to cross the lines. TTC bus, streetcar and subway operations therefore came to a halt.

[10] Around 11:45 P.M. the TTC's Executive Director of Human Relations tried telephoning the Union's President both at home and on his cell phone, but there was no answer and his voice mail would not accept messages. Just before midnight, he reached the Vice-President, advised him that maintenance staff were not reporting for work, and asked if the Union was engaged in a concerted job action. The Vice-President answered that he would look into it and get back.

[11] The TTC concluded that an unlawful strike was underway. Its counsel then began preparing an application for an order that the Union, its members and its leadership "cease and desist" from engaging in, encouraging, supporting, procuring or threatening an unlawful strike; and that the TTC be compensated for its losses, damages and expenses arising from the unlawful strike. At 12:30 A.M. the TTC's counsel telephoned the Chair of the Board to advise him of the pending application.

[12] At 1:21 A.M. on May 29, 2006, the TTC's Executive Director of Human Relations called the Union Vice-President again, but when there was no answer, he left a voice message that the TTC was bringing a "cease and desist" application before the Board. He telephoned the Vice-President again at 1:45 A.M., and this time got through. The Vice-President told him he had informed picketers at one location to return to work, and that he was going to do the same at another location. He said he would call back.

[13] No call having been received, the Human Resources Director phoned the Vice-President again at 2:20 A.M. He asked the Vice-President where he was, so that he could be served with the application documents. The Vice-President responded that he would not willingly be served and added: "Good luck trying to find me."

[14] The documents were completed around 3:00 A.M. and faxed shortly after to the Union's office. A driver was also dispatched to wait outside the office and serve them on the first Union official to appear. The driver served a copy on the President as he arrived at about 5:50 A.M.

[15] Around 4:00 A.M., TTC's counsel arrived at the home of Mr. Ian Fellows, a lawyer who had acted for the Union on two previous applications. Mr. Fellows agreed that the application documents could be left on his doorstep, but indicated he had not been retained and that he was committed to appear in court in Oshawa at 10:00 A.M.

[16] TTC's counsel then set-off to deliver the application materials to the Board Chair at his home. En route, Mr. Fellows called to say that he had read the application documents, to repeat that he was not retained and to ask for the Board Chair's telephone numbers (which were given).

[17] TTC's counsel delivered the documents to the Chair at his home around 4:30 A.M. In a covering letter, he also asked for abridgment of time for reply, the scheduling of an immediate hearing and an order for substituted service of the application on the Union members named in it. The Certificate of Delivery attached to the application indicated delivery to the Union's Vice-President by facsimile at the Union's office and by hand to Mr. Fellows at 3:15 A.M. as the Union's counsel. TTC's counsel advised the Chair verbally of the various conversations summarized here and of efforts to serve the application documents. He indicated that he had left a

copy with Mr. Fellows, who although not retained by the Union was in possession of the Chair's telephone numbers. Upon request, he also provided the Chair with the President's, Vice-President's and Mr. Fellows' telephone numbers.

[18] Mr. Fellows later deposed that he had advised TTC counsel that the Union's in-house counsel, Ms. Heather Alden, would be handling the matter, and that the application should be served on her. He did not provide TTC counsel with her address or telephone number, but deposed that counsel already knew her from numerous previous dealings. He agreed he had asked for the Chair's telephone number, but denied expressing any intention to call the Chair himself. Rather, he said he intended to give it to Ms. Alden, if and when he could reach her. TTC's counsel denied there was any conversation at all about Ms. Alden or her status in the matter. He maintained that Mr. Fellows had requested the Chair's number with the expressed intent of calling him.

[19] Ms. Alden deposed that Mr. Fellows alerted her to the application and its delivery to his home, but that he had advised the TTC to serve it on her. So it was her position that she did not know when the matter was to be heard, and that she was waiting to be served. When she had heard nothing by 7:00 A.M., she telephoned TTC's counsel, who even then did not advise her that an order had been granted the hour before. She further deposed that she ultimately learned of the order from Mr. Fellow's firm, which had received a faxed copy.

[20] At 5:00 A.M., the Board Chair informed TTC's counsel that the application would be heard that morning at 5:30 A.M. by telephone conference call. In Paragraph 3 of his Decision, the Board Chair noted his attempts to contact the Union through executive members and Mr. Fellows:

> 3. Immediately upon receipt of the application, I attempted to contact the President of the ATU, the Vice-President of the ATU and counsel who normally act for the ATU in matters before the Board. Being unsuccessful in speaking to these officers or counsel over the telephone, I left telephone messages advising them that a hearing by conference call was scheduled for 5:30 A.M. today May 29, 2006, providing them with a call in number, to deal with the application. Further, I sent a notice of such hearing by conference call to the ATU by facsimile.

[21] The hearing proceeded as scheduled by telephone before the Board Chair, with only the TTC participating. The Chair found that there was a subsisting collective agreement in place and granted a "cease and desist" order after stating the following conclusions:

> 4. I find on the material filed that the ATU has been served with both the application and has notice of the hearing by conference call scheduled to deal with this application.
>
> 5. The TTC participated in the hearing by conference call. No one participated on behalf of the ATU.
>
> 6. In addition to the material filed, the TTC confirmed in the hearing that picket lines consisting of ATU members were operating at

> all nine TTC Divisions and that employees were either being prevented from reporting to work or were choosing not to cross picket lines. The consequence is that public transit is not operating in the City of Toronto - for example, only seven buses are on the road where normally there would be 1300 buses providing transit service. There are similar consequences for the subway and street car operations.

[22] The Union disagreed that there was an unlawful strike and took the position that the new scheduling policy and "Master Sign-Up" procedure had resulted in an unlawful lock-out. It alleged that senior workers had shown up at their previous, usually assigned shifts and locations, but the TTC had refused them.

[23] The Chair faxed a copy of his Decision to the Union's office around 6:12 A.M. (approximately 40 minutes after making it) and left a telephone voice message of it on Mr. Fellows' cell phone. Shortly after 7:00 A.M., Mr. Fellows telephoned the Chair to confirm that the application had been heard without the Union's participation. In the same conversation, he advised the Chair that he had told TTC's counsel to serve Ms. Alden, and expressed the Union's wish to be heard on an application for unlawful lockout. The Chair scheduled a hearing to reconsider the Decision, as permitted under Section 114 of the Labour Relations Act, 1995, S.O. 1995, c. 1, Schedule A, as amended ("the Act"), at noon the same day before a Vice-Chair.

[24] Both the Union and TTC were represented at the second hearing. It appears that the Vice-Chair reconsidered the original application, as well as the Union's unlawful lock-out complaint. He limited each side's presentation to 25 minutes, followed by 5 minutes each for reply.

[25] The Union complained that the time limit had been unilaterally imposed without inviting submissions from the parties, and that it had denied the Union full opportunity to adduce evidence - in particular the oral evidence of Mr. Fellows, who was standing by to testify about his contact with TTC counsel earlier that morning. The Union also complained that the time limit had denied it full opportunity to make submissions. TTC representatives deposed that Ms. Alden had not made any complaint or submission at all about the time limits at the second hearing.

[26] The Vice-Chair dismissed the Union's unlawful lock-out application and reconfirmed the earlier order. He found that the Union had responded to management action by engaging in an "untimely and unlawful" strike, whereas it should have pursued a grievance procedure if it had a complaint. He also concluded that there was nothing before him to suggest any counsel had acted inappropriately in the matter. He upheld the Chairman's Decision with the following observation:

> 10. I do not disagree with the conclusion reached in paragraphs 3 and 4 of the return to work order. However, even if I were to find that the union had not received notice of the hearing which led to the order, this would not be an appropriate case to vary the Board's order. I am satisfied that the union and its members are engaging in an illegal strike and that the Board would have come to the same decision had the union been present and had the opportunity to make argument - as it was before me - this morning

[27] Based on the two Decisions, the TTC filed a claim four days later for damages of $3,000,000.00 against the Union and its executive board members personally.

III. The Union's Position

[28] The Union took the position that the Board had exceeded its jurisdiction by conducting the hearings as "expedited hearings"; the first, on short notice and without the Union's participation; and the second, with unfairly limited presentation time. As a result, it complained it had not been afforded full opportunity to present evidence and make submissions. This was alleged to be a natural justice denial of procedural fairness and required the setting aside of both orders. Because it involved a denial of natural justice, the usual "pragmatic and functional" standard of judicial review analysis did not come into play. Rather, it was abinitio a proper question for the Court to decide.

[29] The Act gives the Board authority to declare that an unlawful strike (Section 100) or an unlawful lock-out (Section 101) has been threatened or occurred, and to make such direction as will remedy the situation. Section 110(18) of the Act permits the Chair to make rules "to expedite" proceedings in specific situations:

> S. 110(18) The chair may make rules to expedite proceedings to which the following provisions apply:
>
> 0.1 Section 8.1 (Disagreement by employer with union's estimate).
>
> 1. Section 13 (right of access) or 98 (interim orders).
>
> 2. Section 99 (jurisdictional, etc. disputes).
>
> 3. Subsection 114(2) (status as employee or guard).
>
> 4. Sections 126 to 168 (construction industry).
>
> 5. Such other provisions as the Lieutenant Governor in Council may be regulation designate.

[30] Section 110(20) of the Act permits the Board to make Rules eliminating the need for a hearing, and limiting the right to present evidence and make submissions in expedited proceedings:

> S. 110(20) Rules made under subsection (18),
>
> (a) may provide that the Board is not required to hold a hearing;
>
> (b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions; and
>
> (c) may authorize the Board to make or cause to be made such examination of records and such other inquiries as it considers

necessary in the circumstances.

[31] However, because the expedited hearing was limited only to those situations specified in Section 110(18), which did not include unlawful strikes within the meaning of Section 100 or unlawful lock-outs within the meaning of Section 101, the Board did not have jurisdiction to follow expedited hearing procedures where unlawful strike or an unlawful lock-out was in issue. The Union submitted that the Board was therefore without jurisdiction to conduct the hearings on an expedited basis, as allegedly done in this case. That being so, it could not deny a right of hearing or limit the Union's full opportunity to present evidence or make submissions in either hearing.

[32] The Union also relied on Section 110(16), which provides:

> 110(16) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and make their submissions. (Emphasis added)

[33] The Union's submissions therefore continued that subject to the exceptions contained in Section 110(18) and (20), the Board's right to fashion its own procedures was limited by the mandatory requirement of giving "full opportunity to the parties ... to present their evidence and make their submissions." The Board was bound by this clear expression of legislative intent.

[34] As further authority for this proposition, the Union relied on Reid J.'s conclusion in Fisher v. Hotels, Clubs, Restaurants, Tavern Employees' Union, Local 261 (1980), 28 O.R. (2d) 462 (Div. Court) at page 468:

> The Board is governed by the Labour Relations Act. It has wide powers and heavy responsibilities. That has been remarked upon time and again in the decisions of this Court. We are conscious of the need for expedition in its proceedings. That is a familiar theme in the Board's decisions and the submissions of counsel before us.
>
> There are, however, limits beyond which the pressure of expedition must not be permitted to drive the Board. One such limit, and a fundamental one at that, is expressed in s. 91(12) of the Act ... [now Section 110(16)]
>
> The requirement that a "full opportunity [be given] to the parties to any proceedings to present their evidence and make their submissions" is absolute. It overrides the Board's power to determine its own practice

[35] The Union submitted that presenting evidence and making submissions were separate and distinct components in a hearing before the Board. Otherwise Section 110(16) [infra paragraph 31] would not have stated them separately, thereby mandating a right to each. The written materials accompanying the applications were "submissions," while 11 evidence" included the right to call witnesses to testify viva voce. Fisher (supra) and Re. Domtar Packaging Ltd and

United Paperworkers International Union (1974), 1 O.R. (2d) 45 at pages 52 and 53 recognized the distinction.

[36] The Union also complained that the Board had breached its own Rules of Procedure, in particular Rule 7.3(b) providing that the respondent to a notice of application "... must file a response with the Board not later than ... one (1) day after the application ... has been delivered." The same wording had appeared on the notice of application itself. The Union argued this meant it had at least a day to prepare its response, evidence and submissions before the application could be heard. Failing to afford it the prescribed time was a further breach of procedural fairness.

[37] As a further submission, the Union also pointed out that while Rule 38.5 provides that the Board may conduct an electronic hearing in any case before it, it will not do so "... if a party satisfies it that holding an electronic hearing is likely to cause the party significant prejudice." In this case, the Chairman had decided to hold the hearing by telephone conference less than an hour after he had received the application. The Union had no opportunity to address the significant prejudice to it of a telephone conference hearing, which would not permit the presentation of viva voce testimony.

[38] The Statutory Powers and Procedures Act, R.S.O. 1990, c. S.22 ("S.P.P.A.") also requires a notice of hearing, sets out the content of the notice and gives the parties a similar right to demonstrate that significant prejudice will likely be caused by an electronic hearing:

> 6 (1) The parties to a hearing shall be given reasonable notice of the hearing by the tribunal.
>
> (5) A notice of electronic hearing shall include:
>
> (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
>
> (b) A statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
>
> (c) If clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
>
> (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

[39] The Union complained that service both of the application and notice of hearing was faulty and inadequate. With respect to the application, TTC counsel's covering letter to the Chair and the formal Certificate of Delivery filed with the application misrepresented that: (a) Mr. Fellows had been served as the Union's counsel, whereas he was not retained to act, and; (b) that the Union Vice-President had been served, which the Union denied. The Union alleged that the

Certificate of Delivery misrepresented delivery of the documents on Mr. Fellows at 3:15 A.M. whereas they had actually been delivered around 4:00 A.M. The Union also submitted that the Chairman's notice of the electronic hearing did not meet the requirements of Rule 38.5 or Section 6(5) of the S.P.P.A.

[40] If the Act or its Rules somehow permitted the Board to override the requirement of giving notice of an electronic hearing, or of opportunity to demonstrate prejudice under Rule 38.5, the Union urged that it could not overcome the right to proper notice and opportunity to address prejudice under Sections 6(1) and (5) of the S.P.P.A. That could only happen if the Act did so explicitly, as provided in Section 32 of the S.P.P.A., which it did not:

> 32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or bylaws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith.

[41] Section 1(1) of the S.P.P.A. and Rule 1.5(f) of the Act defined "electronic hearing" identically as: "... a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another."

[42] In summary, the Union objected that there had been an impossibly short time to prepare a written response, evidence and submissions for the first hearing - even if there had been proper service of the application and notice of hearing. The fact that the hearing was by telephone also made it impossible to call intended viva voce evidence (in particular, Mr. Fellows' communications with TTC's counsel). All of this was asserted to be a further denial of procedural fairness.

[43] The Union submitted that the second hearing had been similarly flawed when the Vice-Chair unilaterally limited each side's presentation time. As a result, the Union was again denied full opportunity to present evidence and make submissions. It stated that it had intended to call Mr. Fellows to testify orally about advising TTC's counsel to serve Ms. Alden and that she would be acting for the Union. Without this evidence and the accompanying submissions, the Union argued that neither the Chair nor the Vice-Chair could reach just conclusions.

[44] The Union further argued that as a general common law principle, a duty of procedural fairness lies on every public authority making an administrative decision that is not of a legislative nature and that affects the rights, privileges or interests of a party. Where the administrative decision reflects a process, tribunal or determinations to be made resembling judicial decision-making, the common law duty of fairness requires that the affected parties be given an opportunity "to put forward their views and evidence fully and have them considered by the decision-maker." Baker v. Canada (Minister of Citizenship & Immigration), [1999] 2 S.C.R. 817 at paragraph 22. See also: Baker v. Canada (supra) at paragraphs 20 and 23 to 28; Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 S.C.R. 281 at paragraphs 18 to 21; Canadian Pacific Railway Co. v. Vancouver (City), [2006] 1 S.C.R. 227 at paragraphs 38 and 39.

[45] This being so, it was up to the courts to assess procedural fairness without the necessity of standard of review analysis: C. U.P.E. v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539 at

paragraphs 100 to 103; Moreau-Bérubé v. New Brunswick (Judicial Counsel), [2002] 1 S.C.R. 249 at paragraphs 74 and 75; Ontario (Minister of Community, Family and Children's Services) v. Crown Employees Grievance Settlement Board (2006), 213 O.A.C. 169 (Ont. C.A.) at paragraphs 17 to 23.

[46] The Union argued strenuously that its right to fully present evidence and make submissions had been seriously compromised at both hearings, Thus, the Union submits its common law rights of procedural fairness had been denied, which required that the Board's original decision as confirmed in the second hearing be quashed without regard to or necessity for standard of review or the usual deference given the Board in the judicial review process.

IV. Analysis and Discussion

A. The Need for Standard of Review Analysis

[47] There is no question but that procedural fairness (in the context of natural justice) trumps considerations of standard of review, or that procedural fairness is a matter for courts to decide: C.U.P.E. v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539 at paragraphs 100 to 103; Moreau-Bérubé v. New Brunswick (Judicial Council), [2002] 1 S.C.R. 249 at paragraphs 74-75. As Binnie J. observed in C.U.P.E. (supra at paragraph 102), procedural fairness goes to the manner in which the administrative authority went about making its decision, whereas standard of review relates to the end product of the deliberations that produced the decision. The Union framed its appeal largely in terms of how the Board went about making its decision.

[48] Procedural fairness is a precondition to the administrative authority's decision making, and where that is the issue of appeal it becomes a separate matter for judicial consideration. Where a tribunal's decision is attacked on the basis of a denial of procedural fairness or some other natural justice question, it is not necessary for the court to first engage in an assessment of the standard of review. London (City) v. Ayerswood Development Corp., [2002] O.J. No. 4859 at paragraph 10 (C.A.); Gismondi v. Ontario (Human Rights Commission), [2003] O.J. No. 419 at paragraph 16 (Div. Ct). If the court finds the tribunal fell short on procedural fairness, the tribunal's decision will fail and there will be no need for standard of review analysis.

[49] The respondents did not question these principles. That being said, as Binnie J. also pointed out in C.U.P.E. (supra at paragraph 103), there can be confusion between the two lines of enquiry because many of the "factors" considered in determining the requirements of procedural fairness are also involved in standard of review analysis.

B. Assessing the Content of Procedural Fairness

[50] The courts have also recognized procedural fairness as a flexible duty that may vary based on the circumstances of the particular case, L'Heureux-Dubé J. put it this way in Knight v. Indian Head School Division No. 19, [1990] 1 S.C.R. 653 at page 682:

> Like the principles of natural justice, the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case. In Nicholson, [1979] 1 S.C.R. 311, supra, at pp. 32627, Laskin C.J. adopts the following passage from the decision of the Privy Council in Furnell v. Whangarei High Schools Board, [1973] A.C. 660, a New Zealand

appeal where Lord Morris of Borth-y-Gest, writing for the majority, held at p. 679:

> Natural Justice is but fairness writ large and juridically. It has been described as "fair plain action." Nor is it a leaven to be associated only with judicial or quasi-judicial occasions. But as was pointed out by Tucker L.J. in Russell v. Duke of Norfolk [1949] 1 All E.R. 109, 118, the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration. [Emphasis Added]

This was underlined again very recently by this court in Syndicat des employés de production de Québec et de l'Acadie v. Canada (Canadian Human Rights Commission), [1989] 2 S.C.R. 879, supra, where Sopinka J. wrote for the majority at pp. 895-896:

> Both the rules of natural justice and the duty of fairness are variable standards. Their content will depend on the circumstances of the case, the statutory provision and the nature of the matter to be decided. The distinction between them therefore becomes blurred as one approaches the lower end of the scale of judicial or quasi-judicial tribunals and the high end of the scale with respect to administrative or executive tribunals. Accordingly, the content of the rules to be followed by a tribunal is now not determined by attempting to classify them as judicial, quasi-judicial or executive tribunals. Instead, the court decides the content of these rules by reference to all the circumstances under which the tribunal operates. [Emphasis added]

[51] In Ontario College of Teachers v. Power Workers' Union, [2000] O.J. No. 1334, [2000] O.L.R.B. Rep. 422 (at paragraph 3), O'Leary J. of this Court put it very simply: "What amounts to a denial of natural justice depends on the circumstances."

[52] In Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at page 837, L'Heureux-Dubé J. expanded on her observations in Knight (supra):

> 21 The existence of a duty of fairness, however, does not determine what requirements will be applicable in a given set of circumstances. As I wrote in Knight v. Indian Head School Division No. 19, [1990] 1 S.C.R. 653, at p. 682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case." All of the circumstances must be considered in order to determine the content of the duty of procedural fairness: Knight, at pp. 682-83; Cardinal, [1985] 2 S.C.R. 643, supra, at p. 654; Old St. Boniface Residents Assn. Inc. v. Winnipeg (City), [1990] 3 S.C.R. 1170, per Sopinka J.
>
> 22 Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its

> statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[53] Madame Justice L'Heureux-Dubé then identified five non-exhaustive factors that should be considered in determining the content of the duty of fairness in a particular case. These were summarized succinctly in the headnote:

> The duty of fairness is flexible and variable and depends on an appreciation of the context of the particular statue and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision maker. Several factors are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it: (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates: (3) the importance of the decision to the individual or individuals affected: (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself. This list is not exhaustive.

[54] The Supreme Court of Canada re-affirmed the factors and applied them in Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village), [2004] 2 S.C.R. 650 at paragraph 5, although, McLachlin C.J. restated the fifth factor in slightly different words: "... (5) the nature of the deference accorded to the body." I conclude this was not a substantive change, but only a difference of expression.

[55] L'Heureux-Dubé J. offered a brief explanation of the fifth factor at paragraph 27 of Baker (supra):

> Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances: Brown and Evans, supra, at pp. 7-60 to 7-70. While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints: IWA v. Consolidated-Bathurst Packaging Ltd, [1990] 1 S.C.R. 282, per Gonthier J.

[56] If it is determined that there was no breach of procedural fairness or other aspect of natural justice, the court must then embark upon a standard of review analysis - i.e. the degree of deference to be accorded the tribunal's decision.

C. Standard of Judicial Review

[57] As now well-recognized, one of three levels of standard of review is generally applied, namely: "correctness"; "unreasonableness"; or, "patent unreasonableness". To assist in determining the degree of deference intended by a legislature, the court uses a "pragmatic and

functional" approach that weighs four basic factors: (1) the presence or absence of a privative clause or statutory right of appeal; (2) the purpose of the subject legislation as a whole and the particular provisions in question; (3) the nature of the problem or issue decided by the tribunal, and; (4) the expertise of the particular tribunal compared to the reviewing court on the question in issue. Law Society of New Brunswick v. Ryan (2003), 223 D.L.R. (4th) 577 S.C.C.); Pushpanathan v. Canada (Minister of Citizenship and Immigration (1998), 160 D.L.R. (4th) 193 (S.C.C.); Ontario Public Service Employees Union v. Seneca College of Applied Arts & Technology et al. (2006), 80 O.R. (3d) 1 (C.A.). These are the factors that Binnie J. observed can be confused with the factors applied in procedural fairness analysis (infra at paragraph 49).

[58] It was not disputed that the Board should be accorded the highest degree of deference, given its broad jurisdiction to regulate labour relations issues, its exclusive jurisdiction on questions of fact or law in the area, its high degree of expertise and the presence of two privative clauses in the Act. Therefore, a court should not generally interfere with the substantive or procedural decisions of the Board, unless they are "patently unreasonable." McNaught v. Toronto Transit Commission et al. (supra); Lakeport Beverages v. Teamsters, Local Union 938 (2005), 77 O.R. (3d) 543 (C.A.); Toronto District School Board v. Elementary Teachers' Federation of Ontario (2004), 21 Admin. L.R. (4th) 1 (Div. Ct.); Bladsell v. Labour Relations Board (Ontario) (2006), 207 O.A.C. 50 (Div. Ct.);

[59] The contest in the present case did not centre on the applicable standard of review. The standard of "patent unreasonableness" seemed conceded. I agree that is the standard here.

[60] A decision is "patently unreasonable" if it is "clearly irrational" or "evidently not in accordance with reason," and the test is a very strict one. Canada (Attorney General) v. Public Service Alliance of Canada, [1993] 1 S.C.R. 941, at paragraph 44. This was not in issue either.

D. The Board's Special Expertise

[61] Because labour relations boards work with and make determinations under the legislation on a regular basis, and have generally done so for a long time, they are well-recognized as having developed special expertise in that context. Ivanhoe Inc. v. U.F. C. W., Local 500 (2001), 201 D.L.R. (4th) 577 (S.C.C.); Canada (Attorney General) v. Public Service Alliance of Canada, (supra) (S.C.C.); Royal Oak Mines v. Canada (Labour Relations Board) (1996), 133 D.L.R. (4th) 129 (S.C.C.); Cuddy Chicks Ltd v. Ontario Labour Relations Board et al. (1991), 81 D.L.R. (4 th) 121 S.C.C.

[62] In Canada (Attorney General) v. Public Service Alliance of Canada (supra), a case involving review of a decision of the federal Public Service Staff Relations Board, Justice Cory explained the rationale for high judicial deference toward the decisions of labour tribunals (and similar administrative tribunals) while, at the same time, delineating the respective preserves of courts and tribunals:

> [42] There are a number of reasons why the decisions of the Board made within its jurisdiction should be treated with deference by the court. First, Parliament in the Act creating the Board has by privative clause indicated that the decision of the Board is to be final. Secondly, recognition must be given to the fact that the Board is composed of experts who are representative of both labour and management. They are aware of the

> intricacy of labour relations and the delicate balance that must be preserved between the parties for the benefit of society. These experts will often have earned by their merit the confidence of the parties. Each time the court interferes with a decision of such a tribunal confidence is lost not only by the parties which must appear before the Board but by the community at large. Further, one of the greatest advantages of the Board is the speed in which it can hold a hearing and render a decision. If courts were to interfere with decisions of the Board on a routine basis, victory would always go to the party better able to afford the delay and to fund the endless litigation. The court system itself would suffer unacceptable delays resulting from the increased case load if it were to attempt to undertake a routine review.
>
> [43] None of this is to say that some form of review is not salutary and necessary. Certainly, the courts are eminently well suited for determining whether the Board has exceeded the jurisdiction which is granted to it by its enabling statute. Further, the courts are in the best position to determine whether there has been a denial of natural justice which would result in a loss of jurisdiction by the tribunal. As well, all parties have the right to be protected from a decision that is patently unreasonable. Beyond that the courts need not and should not go, A board which is created and protected by a privative clause is the manifestation of the will of Parliament to create a mechanism that provides a speedy and final means of achieving the goal of fair resolution of labour-management disputes. To save its purpose these decisions must as often as possible be final. If the courts were to refuse to defer to the decisions of the Board, they would negate the very purpose of the Act and its express provisions.

[63] Justice Cory's observations aptly reflect aspects of the dispute in this case. As he emphasized, labour relations boards are especially able to hear and decide matters with speed. That may be particularly important where there is urgency.

[64] The TTC (and the Board itself) urged that the Board be accorded a high degree of deference based on expertise and broad jurisdiction accompanied by authority over process. While not really disputing that high deference should be accorded, the Union complained that the Board had exceeded the jurisdiction and authority given it.

[65] The Union argued that the Board could not exceed the underlying purpose and authority fashioned by the Legislature. It must also afford fairness and natural justice in its decisions, including in respect of the application of its own rules and practices. The Union submitted that the Board had acted in a patently unreasonable way in the conduct of the hearings. The tribunal's expertise and the deference accorded it are also germane to assessing the content of procedural fairness appropriate to the circumstances of the case.

[66] These are, in large, the questions and principles of law in play in the present appeal. Before addressing them more closely, it is appropriate to consider relevant aspects of the legislation itself.

E. The Board's Purpose, Function and Authority

[67] The Board is, of course, a creature of the Act, which has the following stated purposes:

> 2. The following are the purposes of the Act:
>
> 1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.
>
> 2. To recognize the importance of workplace parties adapting to change.
>
> 3. To promote flexibility, productivity and employee involvement in the workplace.
>
> 4. To encourage communication between employers and employees in the workplace.
>
> 5. To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
>
> 6. To encourage co-operative participation of employers and trade unions in resolving workplace issues.
>
> 7. To promote the expeditious resolution of workplace disputes. (Emphasis added)

[68] This statement of purpose is indicative of the breadth of function and jurisdiction intended by the Legislature for the Board. It is obvious that the mechanisms, procedures, and remedies contained in the Act were meant to foster comprehensive resolution of disputes in the workplace.

[69] It is unquestionable that by late evening of May 28 and early morning of May 29, 2006, the situation between the TTC and Union constituted a "workplace dispute." There can also be little question that it required "expeditious resolution," if only because it threatened (whether by strike or lock-out) to paralyze public transportation in Canada's largest metropolitan centre. The situation underlying the orders in question fitted the intended purpose of the Act.

[70] Section 110 of the Act establishes the Board and outlines its composition, administration and operation. Section 111(1) provides that the Board "shall exercise the powers and perform the duties that are conferred or imposed upon it by or under the Act."

[71] Although the Board usually sits in divisions composed of more than one member, Section 110(14) authorizes the Chair to sit alone or authorize a Vice-Chair "to sit alone to hear and determine a matter and to exercise all the powers of the Board when doing so, ... if the Chair considers it advisable to do so".

[72] It is clear in the case at hand that the Chair decided to sit alone on the first hearing, and that he authorized the Vice-Chair to sit alone on the reconsideration hearing. In my view, the provisions authorizing this exceptional procedure are compatible with and indicative of the Act's purpose of achieving expeditious resolution of workplace disputes in urgent or other appropriate circumstances. It is a form of abridgement of the tribunal's normal composition and a device of speedy resolution. The Legislature clearly contemplated the potential need. Otherwise it would not have made such specific provision.

[73] Section 100 gives the Board authority to receive a complaint of an unlawful strike from an employer, to declare that an unlawful strike is threatened or has taken place, and to direct appropriate refraining action. The Section is very broad in its language:

> 100. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike or that employees engaged in or threatened to engage in an unlawful strike or any person has done or is threatening to do an act that the person knows or ought to know that, as a probable consequence of the act, another person or persons will engage in an unlawful strike, the Board may so declare and it may direct what action, if any, a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike.

[74] Section 101 gives the Board equally broad authority to hear complaints and declare and direct a remedy in respect of unlawful lock-outs.

[75] Section 114 provides that the Board has exclusive jurisdiction over these matters:

> 114. The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

[76] The strength of the Legislature's intent in this regard is underlined in a second privative clause prohibiting review by the courts of the Board's decisions, orders, directions, declarations and rulings:

> 115. No decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, otherwise, to question, review, prohibit or restrain the Board or any of its proceedings.

[77] It is therefore clear that the Board has exclusive jurisdiction to deal with complaints of unlawful strike and unlawful lock-out, to make findings of fact and law on these issues, and to give ultimate remedy or direction. When the TTC perceived it was facing an unlawful strike, it had to bring its complaint to the Board. There was no other legal forum. It could not go to a court. The Union's options were similarly limited when it sought remedy for unlawful lock-out.

F. Control over Procedure and Accepting Evidence

[78] Although Section 110(16) has already been referred to in the context of the Union's argument for procedural fairness (infra at paragraph 32), the section also provides that: "The Board shall determine its own practice and procedure ..."

[79] Section 111(2)(e) specifically gives the Board the power "to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not." Therefore, the usual rules of evidence prevailing in courts, do not necessarily apply in Board proceedings. This is an important distinction between the operation of courts and the Board. The manner in which evidence is received by the tribunal is also within its discretion - i.e. oral or written. There is no requirement that evidence be received in the form of oral testimony.

G. Practice and Procedure

[80] Section 110(17) of the Act gives the Chair authority to make rules governing the Board's practice and procedure:

> 110(17) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable.

[81] The Rules of Procedure, in force December 1, 2005, give the Board broad authority to abridge otherwise usual time requirements, the way in which notification of hearing is given, service of documents, and the manner and form of hearing. It may also generally relieve against the strict application of the Rules when considered advisable to do so:

> RULE 3 TIME
>
> 3.2 The Board or the Registrar may shorten or lengthen any lime period set out in or under these Rules, as either considers advisable.
>
> RULE 6 COMMENCEMENT- DELIVERY AND FILING
>
> Manner of Delivery
>
> 6.1 Every case must be started by completing, delivering and filing the proper application form and filing and delivering any other documents required by these Rules.
>
> 6.4 Applications, responses, and requests covered by Rule ... 7.3(b) (strikes and lock-outs) ... must be delivered in one of the following ways:

(a) hand delivery;
(b) courier;
(c) facsimile transmission;
(d) any other way agreed upon by the parties,

6.6 Where the Board considers that it is impractical for any reason to deliver an application within the time period set out in these rules, the Board may make an order for substituted delivery or for such other order as may be appropriate.

7.3 A person receiving notice of an application who wants to participate in any way in the case must file a response with the Board not later than:
(a) the response date (if one has been set);
(b) one (1) day after the application under section 100, 101, or 144 was delivered;

RULE 38 HEARING PROCEDURES

Notice of Hearing

38.1 Where a hearing or consultation will be held in a case, written notice will be given to all parties setting out the time, date and place of the hearing or consultation.

38.2 Where the Registrar considers that it is impractical to give written notice of the hearing or consultation, the Registrar may give verbal or other notice of the hearing or consultation.

Written Hearings

38.4 The Board may conduct a written hearing in any case before it, as the Board considers advisable. Unless the only purpose of the hearing is to deal with procedural matters, the Board will not conduct a written hearing if a party satisfies the Board that there is good reason for not doing so.

Electronic Hearings

38.5 The Board may conduct an electronic hearing in any case before it, as the Board considers advisable. Unless the only purpose of the hearing is to deal with procedural matters, the Board will not conduct an electronic hearing if a party satisfies it that holding an electronic hearing is likely to cause the party significant prejudice.

RULE 1 ... DEFINITIONS

Definitions
1.5 In these Rules

f) "electronic hearing" means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another;

> h) "hearing" means a hearing in any proceeding before the Board including oral hearings, written hearings and electronic hearings;
>
> RULE 40 ADMINISTRATION
>
> 40.7 The Board may relieve against the strict application of these Rules where it considers it advisable.
>
> [Emphasis added by italics in Rules quoted above]

[82] Section 94 of the Act provides for service of process:

> 94.(1) Every trade union and unincorporated employers' organization in Ontario that has members in Ontario shall, within 15 days after it has enrolled its first member, file with the Board a notice in the prescribed form giving the name and address of a person resident in Ontario who is authorized by the trade union or unincorporated employers' organization to accept on its behalf service of process and notices under the Act.
>
> (2) Whenever a trade union or unincorporated employers' organization changes the authorization referred to in subsection (1), it shall file with the Board notice thereof in the prescribed form within 15 days after making such change.
>
> (3) Service on the person named in a notice or the latest notice, as the case may be, filed under subsection (1) is good and sufficient service for the purposes of this Act on the trade union or unincorporated employers' organization that filed the notice.

[83] The legislated combination of exclusive jurisdiction and the broad ability to self-regulate process has resulted in long-standing judicial recognition of the Board as "master of its own house" - classically stated by Arnup J.A. in Re. Cedarvale Tree Services Ltd. and Labourers' International Union of North America (1971), 22 D.L.R. (3d) 40 (C.A.) at pages 49 and 50:

> It is clear to me that under the Labour Relations Act the Board is master of its own house not only as to all questions of fact and law failing within the ambit of the jurisdiction conferred upon it by the Act, but with respect to all questions of procedure when acting within that jurisdiction. In my view, the only rule which should be stated by the Court (if it be a rule at all) is that the Board should, when its jurisdiction is questioned, adopt such procedure as appears to it to be just and convenient in the particular circumstances of the case before it (at page 49).
>
> The Board has been entrusted with very wide powers in the labour relations field, and so long as it acts within the ambit of its jurisdiction, it is for the Board itself to decide how it shall proceed (at page 50).

[84] The Supreme Court of Canada gave similar recognition in Prassad v. Canada (Minister of Employment and Immigration), [1989] 1 S.C.R. 560, where, just before referring to Re. Cedarvale Tree Services Ltd (supra), Sopinka J. observed at pages 568 and 569:

> "In order to arrive at the correct interpretation of statutory provisions that are susceptible of different meanings, they must be examined in the setting in which they appear. We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters of their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasijudicial functions, the rules of natural justice ...

[85] Courts will not generally interfere with such a tribunal's procedural decisions, provided they are made fairly and within the tribunal's jurisdiction, as Gillese J.A. made clear in McNaught v. Toronto Transit Commission et al. (2005), 74 O.R. (3d) 278 (C.A.) at paragraphs 59 and 60:

> [59] It is trite law that a duty of fairness applies to any Board decision that affects the rights, privileges or interests of a party to the hearing. See Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39
>
> [60] At the same time, it is equally clear that courts are not to interfere with the Board's procedural decisions, so long as they comply with the rules of fairness, unless they are shown to be patently unreasonable ...

[86] There is undeniable tension as among the tribunal's ability to control its process, the duty of fairness and the degree of deference courts should afford the exercise of the tribunal's discretion in these competing areas. Context is often the balancing ingredient.

V. Discussion and Conclusions

A. Expedited Proceedings

[87] The Union's submissions in this appeal began with the proposition that the Board had treated the applications as "expedited proceedings" under Section 110(18) of the Act, but that the expedited hearing process was not available in illegal strike or illegal lock-out situations (infra at paragraphs 28 and 29). I do not agree. I conclude that the Board neither acted nor purported to act under the expedited proceedings provisions of the Act or Rules.

[88] There is a fundamental difference between the "expedited proceedings" specifically contemplated by Section 110(18) of the Act and abridgement of otherwise normal procedures. The abridgement provisions found in Rules 3.2, 6.6, 38.2, 38.4, 38.5 and 40.7 (infra at paragraph 82) apply generally to all of the Board's procedures. This is apparent from their placement within named Parts of the Rules. These Parts are clearly of general application.

[89] Rules 1, 3 and 6 appear under Part I entitled "General Matters". Part VII is entitled "Hearing Procedures and Administration", and contains Rules 38 ("Hearing Procedures"), 39 ("Dismissal Without A Hearing or Consultation") and 40 ("Administration"). Neither the organization of these Rules nor their language suggests any limitation of application to matters covered only by Section 110(18) of the Act (i.e. "expedited proceedings").

[90] The language of these Rules is also very general. So, for example, where Rule 3.2 states that the Board may shorten or lengthen any time period set out under the Rules, it does not limit it

only to "expedited proceedings." Similarly, where the other abridgement Rules refer to an "application" or a "hearing," they are not limited to hearings under the Section 110(18) expedited process. I therefore conclude that these abridgement provisions apply to any type of application, hearing or process before the Board, whether constituted as a panel, the Chair or Vice-Chair. They are not unlike the abridgement provisions of very general application under the Rules of this Court.

[91] I am comforted in this conclusion by the specific wording and placement of Rule 4 1, which is entitled "Expedited Proceedings":

> RULE 4 EXPEDITED PROCEEDINGS
>
> 41.1 Rules 41.2 and 41.3 apply to the Ambulance Services Collective Bargaining Act, 2001, Public Sector Labour Relations Transition Act, 1997, Part X.1 of the Education Act, Part IV of the Crown Employees Collective Bargaining Act, 1993, section 61 of the Occupational Health and Safety A Act, section 118(2) of the Employment Standards Act, 2000 and sections 8.1, 13, 98, 99, 114(2) and 126 to 168 of the Labour Relations Act, 1995.
>
> 41.2 In order to expedite proceedings, the Board or Registrar may, on such terms as either considers advisable, consult with the parties, conduct a pre-hearing conference, issue any practice direction, shorten or lengthen any time period, change any filing or delivery requirement, schedule a hearing, if any, on short notice, or cancel such hearing, or make or cause to me made such examination of records or other inquiries as either considers necessary in the circumstances.
>
> 41.3 Where the Board is satisfied that a case can be decided on the basis of the material before it, and having regard to the need for expedition in labour relations matters, the Board may decide the application by limiting the parties' opportunities to present their evidence or to make their submissions, or without hearing.

[92] Rule 41 provides an abridgement process that applies to "expedited proceedings." While appropriately situated under Part VII (dealing with "Hearing Procedures and Administration"), it is specific to expedited proceedings alone. As such, it may completely restrict a party's right to present evidence and make submissions. Rule 41.3 provides that in "expedited proceedings" the Board may decide a case "without a hearing." (Emphasis added)

[93] Unless otherwise exempted (also, for example, Section 99 of the Act in respect of jurisdictional disputes), the Board must conduct a hearing before reaching a decision, and it must do so fairly and by the process established under the Act and its Rules, including rules of abridgement. In derogating from the norm through abridgement, the Board may only vary times, not eliminate them; it must give notice of a hearing, although it may vary the manner of doing so; it must conduct a hearing, although it may allow it to proceed electronically; it must allow the parties full opportunity to present evidence and make submissions, although it may direct how this is to be done, including orally or in writing, whether by evidence admissible in a court of law or not.

[94] If the abridgement rules were not of general application, it would not have been necessary to provide a specific Rule for hearings in expedited proceedings, as was done by Rule 41.

[95] Not much has been written about "expedited proceedings." Jeffrey Sack, C. Michael Mitchell and Sandy Price in Ontario Labour Relations Board Law and Practice, Third Edition, loose-leaf (Markham, Ontario: Butterworths, 1997) Volume 2 at paragraph 10.2, trace its origins to the Report of the Ontario Royal Commission on Labour Management Relations in the Construction Industry (Toronto, Ontario: Queen's Printer, 1962) (Chair: H. Carl Goldenberg) [the "Commission"]. The Commission concluded that the construction industry needed special procedures to process certification applications. At page 72 of the Report, Recommendation B. vii stated:

> The Labour Relations Act should declare a policy that construction industry cases be expedited, having regard to the special nature of the industry; special provisions should be made in the Rules of Procedure of the Board for the expeditious processing of such cases ...

[96] At pages 27 to 28 the Commission characterized the construction industry as uniquely unstable for purposes of certification:

> The bargaining unit envisaged by the Act is a group of regularly employed persons engaged by a single employer and working at a particular location throughout the year. Construction employment does not fit this picture. It has no stability. The worker moves from job to job and from employer to employer. The duration of his employment may range from a few days to a number of months, depending on the size of the project.

[97] Trade unions (and some employer groups) made strong representations that the Board be given special authority to "expedite" construction industry certification applications. As a result, the Labour Relations Act, R.S.O. 1960, c. 202 was amended by s. 10(3) of the Labour Relations Amendment Act, 1961-62, S.O. 1961-62, c. 68 to provide for expedited proceedings:

> 10(3) The Board may, subject to approval of the Lieutenant Governor in Council, make rules to expedite proceedings to which sections 90 to 96 apply [the construction industry], and such rules may provide that, for the purposes of determining the merits of an application for certification to which sections 90 to 92 apply, the Board shall make or cause to be made such examination of records and such other inquiries as it considers necessary, but the Board need not hold a hearing on such an application.

[98] The Section remained virtually unchanged for over 30 years, as reflected in s. 104 (14) of the Labour Relations Act, R.S.O. 1990, c. L.2:

> 104(14) The Board may, subject to the approval of the Lieutenant Governor in Council, make rules to expedite proceedings before the Board to which sections 119 to 138 apply [the construction industry), and the rules may provide that, for the

> purposes of determining the merits of an application for certification to which sections 119 to 121 apply, the Board shall make or cause to be made such examination of records and such other inquiries as it considers necessary, but the Board need not hold a hearing on such an application.

[99] The Labour Relations and Employment Statute Law Amendment Act, 1995, S.O. 1995, c. I then repealed the section and replaced it with the current s. 110(18). Although there was no discussion or explanation of the amendment as it went through the legislative process, it appeared to be an expansion of the types of labour matters that uniquely required speedier processing by virtue of special difficulties such as those earlier recognized in the construction industry. In any event, there is nothing to suggest that the "expedited proceeding" is of general application or a means of addressing emergency labour situations. Indeed, its history, placement within the Act and the other structure of the Act (as discussed) lead me to conclude that expedited proceedings are a special process designed to address unique problems in certain types of industries.

[100] I conclude that the Board's general authority to abridge certain procedural requirements is quite different from its authority to conduct expedited proceedings under Rule 41. It did not act or purport to act under the "expedited proceedings" provisions of the Act. This was not an industry type or situation requiring the process to be expedited because of some unique feature of the particular labour sector or situation.

B. Abridgement

[101] The Board was quite within its authority to abridge normal procedures according to its Rules and within its jurisdiction - provided that it afforded an appropriate level of procedural fairness. Procedural abridgment usually requires some special circumstance warranting departure from the norm, and the degree of abridgement usually depends on the demands of the situation.

C. The Content of Procedural Fairness

[102] I turn now to the content of the procedural fairness due the parties in this case. The "factors" to be applied in assessing the Board's duty of procedural fairness were identified earlier in paragraphs 50 to 56 of these Reasons.

[103] The Nature of the Decision: The Board enjoys a broad jurisdictional mandate covering virtually every aspect of labour relations. It must reach decisions in disputes such as this one through hearings presided over by an adjudicative panel (or single adjudicator in extraordinary circumstances). There is an application process with forms, time-lines for taking steps, a hearing process, service requirements and other procedural features detailed by Rules under the authority of the Act. The nature of the Board's decisions, the way it functions and its procedure closely resemble judicial decision making, and as such, the content of procedural fairness before the Board must generally also be like a court's. Because of this, I conclude that the Board's procedural requirements are fashioned, in part, for the purpose of assuring parties procedural fairness in an orderly manner as a court would do. I therefore conclude that Board functions like a court in the nature of the matters it decides and how it decides them.

[104] However, the way in which procedural fairness is achieved must be considered against the backdrop of the types of matters the Board is required to decide as part of its unique

jurisdictional mandate, including situations and degrees of potential strife and disruption to employers, employees and the broader community. The content of procedural fairness is necessarily shaped by the context and circumstances of the particular matter under consideration.

[105] Urgency will undoubtedly create tension between the competing need to resolve a potentially dangerous situation and the fundamental justice requirement that it be done fairly. The ability to accommodate and relieve such tension is achieved through the broad control the Board is given over its process, including through such means as abridgement and the other adjusting features already discussed. These are only instruments of adjustment and accommodation, however, not means of escaping the duty of procedural fairness.

[106] The nature of the legislative scheme: Although there is no appeal process, and therefore initial procedural fairness may be all the more important, Section 114 grants the Board jurisdiction to reconsider a decision or order, and to vary or revoke it. So a decision of first instance is not necessarily final. The availability of reconsideration is a significant procedural protection that heightens the ultimate content of procedural fairness for a party, but may also permit the tribunal greater flexibility in the first instance. This is particularly so when a decision may have to be taken quickly because of some pressing circumstance.

[107] The reconsideration process also requires a hearing with full opportunity to present evidence and make submissions. The Union successfully persuaded the Board to reconsider the "cease and desist" order made at the first hearing in this case, and to do so later the same day. The fact that the Union had this avenue available, availed itself of it expeditiously with the issue framed in the terms it sought, went a long way to addressing complaints of procedural fairness. It is also significant that reconsideration may include a complete rehearing, rather than the narrower appeal process that courts usually follow. It appears that the reconsideration in this case operated as a full rehearing.

[108] As the Vice-Chair observed in the second hearing, grievance and arbitration processes were also options for the resolution of the particular dispute, both before and after the two hearings. The existence of alternative avenues of resolution must be acknowledged when assessing the content of the procedural fairness accorded the parties in this situation. Because of the urgency of the circumstances from their competing perspectives, the TTC and Union each sought and obtained speedy hearings. That was a matter of choice, even though the other avenues of resolution were available, although they would have taken much more time to pursue.

[109] The importance of the decision to the party affected: As L'Heureux-Dubé J. observed in Baker (supra at pages 838 and 839): "The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the protections that will be mandated." Thus, when the right to continue one's profession or employment is at stake the importance of the fairness component is elevated. Kane v. Board of Governors of the University of British Columbia, [1980] 1 S.C.R. 1105, at page 1113.

[110] The decisions resulting from both hearings were important to both sides. However, being ordered to stop picketing did not end the Union members' jobs or exhaust other potential redress and remedy. On the other hand, the employer's business had been brought to a halt without prior warning and with very serious consequence to the broader community. The employees may have had to work in circumstances they did not prefer, but they still had recourse, and in fact the court

was advised at the hearing that the matter was subsequently resolved, although details were not provided.

[111] Legitimate expectations of the party challenging the decision: Given the nature of the decision, the legislative scheme and the dispute as discussed, the Union had a legitimate expectation of participation in any process that might result in an order affecting it or its members. It had a reasonable expectation to make its position (together with the facts and circumstances relied on in taking that position) known to the decision-maker so that the decision maker might reach an informed conclusion. In short, the Union rightfully expected there would be a hearing, and that it would have the right to participate meaningfully. In all but "expedited proceedings" under the Act, affected parties are entitled to a hearing and "full opportunity to present evidence and to make submissions" [Section 110(16) of the Act]. The Union complained that it did not have the right to participate in the first hearing and that the quality of the second hearing fell short of procedural fairness. I do not agree with this position and will return to it shortly.

[112] The nature of the deference accorded the decision-maker: Again, as L'HeureuxDubé J. described in Baker (supra at page 840), an analysis of fairness "... should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances ...". At page 659 of Congrégation des témoins (supra) McLachlin C.J. put it thus: "The fifth factor ... calls upon the reviewing court to acknowledge that the public body may be better positioned than the judiciary in certain matters to render a decision, and to examine whether the decision in question falls within this realm." The Justices noted that this factor may not be determinative or carry much weight.

[113] Irrespective of its expertise, the Board must give parties to disputes such as this a right of hearing with full opportunity to present evidence and make submissions. That is an essential requirement of the Act. Expertise cannot operate to the exclusive benefit of only one of the parties.

[114] However, the Board must be credited with expertise in understanding the nature of the dispute, assessing the urgency of resolution, and recognizing the underlying tactics, strategies and dynamics of labour relations disputes generally and in this particular case. It must be accorded considerable respect in its choices of procedure to address these considerations, provided fundamental fairness is appropriately respected and afforded in all of the circumstances of the case.

[115] It is common ground that the Board is a tribunal of great expertise, with considerable history and experience in designing and applying its own procedures. It is charged with the important function of administering collective bargaining laws, controlling and enforcing the resulting rights and responsibilities on all sides, maintaining balance and peace in labour relations, and resolving disputes in an expeditious manner. In carrying out its function, the Board not only serves the general and individual interests of employers and employees. It also serves an important function in maintaining a degree of peace and economic order within the larger community. For these reasons, the Board also merits a high degree of deference with respect to the fairness of its procedural decisions.

D. Propriety of Hearing and Notice

[116] Dealing now with whether there was sufficient content of procedural fairness in the present case, I start with the "hearing" issue. Although a hearing was held in the first instance, the Union did not appear and therefore did not participate. The Union's position was that it was not notified or permitted to participate, so there was a complete failure of procedural fairness.

[117] The Chair was aware of the notification issue because in paragraph 3 of his Decision, he observed:

> Immediately upon receipt of the application, I attempted to contact the President of the ATU, the Vice-President of the ATU and counsel who normally act for the ATU in matters before the Board. Being unsuccessful in speaking to these officers or counsel over the telephone, I left telephone messages advising them that a hearing by conference call was scheduled for 5:30 AM today May 29, 2006, providing them with a call in number to deal with the application. Further, I sent a notice of such hearing by conference call to the ATU by facsimile.

[118] It is unusual that the Chair himself would make such efforts to contact the Union (let alone before five o'clock in the morning). The party seeking a remedy usually has the obligation of notification and satisfying the tribunal that the requirement has been met. That is how the Board's Rules read too, although it must be remembered that the Rules permit verbal or other notice of a hearing where written notice is impractical (infra at paragraph 82). This speaks to the sense of urgency the Chair must have had about the situation. Notice was obviously on his mind. He concluded in paragraph 4 of his Decision that on the basis of the material filed, the Union had been served with the application and had notice of the telephone conference hearing.

[119] In the second paragraph of his Decision, the Chair acknowledged the allegation of unlawful strike "with the consequence that the TTC is not able to provide transit this morning, May 29, 2006." The Union might regard this as a one-sided finding of fact, although it was never denied that pickets were up and workers other than the aggrieved maintenance employees were refusing to cross the lines. This must have been a significant factor in the Vice-Chair's considerations at the second hearing too.

[120] It does not take great expertise to understand the enormous disruption that an unwarned total breakdown of public transit would have on the lives of hundreds of thousands of ordinary people in the Greater Toronto Area. Earnings would be lost, families' daily routines disrupted, schools left empty and the economic life of the community thrown into disarray. The consequences of such a disruption are so obvious and potentially dire as to need little comment. Being totally paralyzed, the TTC was essentially out of business with costs mounting - and one way or another those costs would also be passed on to the public. If there is a theoretical continuum of urgency, the situation on the morning of May 29, 2006, was very near the "most urgent" end of the scale.

[121] I conclude that the Chair, being an expert in labour relations within the context of the Act, fully appreciated the nuances of the situation. Given his experience and the years of underlying jurisprudence developed by the Board, he possessed a focused practical and legal

expertise. He could well have postponed the hearing until the next day or next week to better convenience the Board or one of the parties. He obviously thought it necessary to act quickly.

[122] There was also sufficient factual basis upon which to conclude that the Union was aware of the pending application and was avoiding service. The TTC's Director of Human Relations called the Union's Vice-President at 1:21 A.M. and left a voice message that a cease and desist order was being sought. At 1:45 A.M. he got through to the Vice-President by telephone and they talked about service of the application. This is when the Vice-President indicated he would not willingly be served or found for that purpose.

[123] The Union's Vice-President acknowledged that picketing was underway. He represented that he was telling picketers to return to work. The implication is that the Vice-President knew the picketing was wrong. Being informed that an application was pending and being asked to be available for service at that hour, he also had to be aware that the TTC planned to approach the Board immediately on an emergency basis. He had to know that the TTC was effectively shut down and the far-reaching consequences of the situation. It is difficult to believe that the other members of the Union executive were not aware of what was happening given the development of the dispute and the day's events.

[124] The Certificate of Delivery accompanying the application indicated that the Union's Vice-President had been served by facsimile (not personally) at the number indicated. It also stated there had been delivery by hand to Mr. Fellows as counsel for the Union. It then went on to certify that both had occurred at 3:15 A.M.

[125] It was not challenged that the fax had been sent at 3:15 A.M. However, the delivery to Mr. Fellows did not occur until around 4:00 A.M., so the Certificate was incorrect in that regard. The error may have occurred because the two events were stated in concert. Nevertheless, TTC's counsel deposed that he had advised the Chair of his conversations with Mr. Fellows, and that Mr. Fellows was not retained. I am satisfied that the error in respect of Mr. Fellows' status was corrected, and that the misrepresentation of the timing of delivery to Mr. Fellows was not a serious one (if it too was not corrected in the TTC's counsel's conversation with the Chair). The Vice-Chair expressed his satisfaction that no counsel had acted inappropriately.

[126] Based on Rule 6.4 (supra at paragraph 82), facsimile transmission of the application and the notice of hearing may constitute proper delivery. The Union did not address the question of who its registered person for service of process was. The TTC asked the Vice-President where he could be served with the application. Other efforts were undertaken when he would not co-operate, including sending by facsimile.

[127] It may well be that the Vice-President was the Union's designated person for service of process. That would explain the TTC's initial interest in him for service of the application. If he was the designated person, then service by facsimile could have been effective pursuant to Rule 6.4. That detail was not disclosed to or discussed with this court. However, I am satisfied that the Chair and Vice-Chair were very familiar with the rules of service in matters before them and that there was sufficient factual basis for their conclusions in that regard.

[128] The Vice-President did not file an affidavit denying he had refused to co-operate in being served, or saying that he had not received telephone messages or facsimile transmissions about

the application and the electronic hearing from TTC's counsel or the Chair. Nor did any other member of the Union executive file an affidavit deposing that telephone messages and facsimiles had not been received. The Union did not deny that its Vice-President had been apprised of the pending application or that he had refused to co-operate in being served.

[129] The Chair did not know the Union's position (through Mr. Fellows) of advising TTC's counsel to serve Ms. Alden. However, assuming that Mr. Fellows' version of events had been known and accepted, it was never suggested that there was an agreement that Ms. Alden was a person authorized to accept service (infra at paragraph 83 in reference to Section 94 of the Act). Without the Union's agreement, she could not be the Union's representative for service of process and she was not a named party in the application. Also, Mr. Fellows could not direct service if he was not acting for the Union. Serving Ms. Alden might have been effective, although that can only be speculated at this point. In any event, the TTC took the steps it did with a view to obtaining an order for substituted service, which it could not know would be granted.

[130] If Ms. Alden was aware that the application had been delivered to Mr. Fellows and was on its way to the Chair's home at such an early hour, she also had to know that the TTC was looking for an emergency hearing at the earliest possible time. It is strange under those circumstances to be sitting waiting for a knock at the door. If Ms. Alden was the Union's counsel, she must also have known who was authorized to accept service and that it could be achieved by facsimile. If Mr. Fellows' version of communication with TTC's counsel is correct, it may be as questionable that Ms. Alden did not try to reach the TTC in the circumstances as the TTC's failure to reach her. One would think the Union might welcome the Board's involvement and attempt to facilitate a speedy hearing as a means of advancing its members' complaint, unless delay was a strategy.

[131] If the Union complains of improper or inadequate service, it bears the onus of satisfying the court that was so. Many factual questions were not addressed, as the foregoing discussion demonstrates. I am not satisfied that the Union has met its burden on a factual basis.

[132] In any event, in his covering letter TTC's counsel requested an order for substituted service, and he advised the Chair orally of the efforts made to serve and notify the Union. The Chair also took his own steps to notify verbally and by facsimile as he described in his Decision, and which was available under Rule 38.2 (infra at paragraph 82). In view of the urgent circumstances, the efforts made to effect service and to contact the Union, the Chair was also well within his right to make an order for substituted service under Rule 6.6 (supra at paragraph 82). Although the Chair's finding that there bad been service of the application is supportable, I am also comfortable in concluding that it was in response to the request for substituted service.

[133] The Union did not respond to the efforts made to contact it, and it did not appear at the first hearing (either to participate or seek further time) although found to have been served and notified. Therefore, there is no basis for finding a breach either of Rule 38.5 or Section 6(5) of the S.P.P.A. Indeed, Section 6(5)(d) permits the tribunal to proceed in such circumstances, and it did. In failing to appear, the Union passed up its opportunity to address the question of significant prejudice by the holding of an electronic hearing. Given the valid finding of service and notice, the failure was the Union's, not the TTC's or the Board's. I see no breach of the Act, the Rules or the S.P.P.A., and in these circumstances there could be no conflict between the similar provisions of the two statutes. Therefore, I conclude that there was no breach of procedural fairness in

respect of service, notification or the opportunity to address prejudice in respect of an electronic hearing.

[134] The case of Tomko v. Labour Relations Board (Nova Scotia) et al. (1979), 69 D.L.R. (3d) 250 (S.C.C.) involved an interim application to the Nova Scotia Labour Relations Board for a cease and desist order because of an allegedly unlawful strike. One of the responding parties named was the Union's business manager, Tomko, who was called in advance of the hearing by the Board's chief executive officer to be advised that the complaint had been filed and to discuss generally what was happening at the strike site. He was not given a copy of the complaint nor read its contents. He did not respond to the complaint. An interim order was granted and eventually Tomko was charged with failing to comply with the order. He moved to quash the order and prohibit the summons on the basis that he had not been given a copy of the complaint or an opportunity to make representations.

[135] Although the legislative scheme differed greatly from our own, the Court recognized that general knowledge of the complaint and what it was about is sufficient in appropriate circumstances to satisfy natural justice requirements. Laskin C.J.C. observed at page 259 of the decision (supra):

> ... Having contacted the manager of the project where the strike was on foot he then telephoned Tomko to inform him of the complaint but apparently without reading the whole document to him. There was a short discussion of what was going on at the site of the strike and whether the men had been directed to return to work. I accept that Tomko was not given any detail of the nature of the formal complaint other than that it had been filed, but his evidence is clear that he knew what it was all about, knew the issue that prompted the complaint and knew that its purpose was to have the Construction Industry Panel bring the strike to an end. Unless therefore, there is an inexorable requirement under the applicable law that he must be given a copy of the formal complaint, in order to make the representations thereon, before any action on the complaint may be taken by the Panel, I see no merit in the appellant's contention that there was in this respect a failure of natural justice ... [Emphasis added]

[136] There was no "inexorable requirement" in our case either, given the Board's broad authority over its process, including through abridgement and substituted service where appropriate and necessary.

E. Abridgement and Limitation of Hearing Time

[137] There is no doubt that the initial application was heard expeditiously. However, that was by abridgement of time under the Board's Rules, not by the "expedited hearing" process under the Act and Rules. There was nothing wrong with abridging time and other normal procedural requirements if the circumstances justified it. In this case, the circumstances were extreme and warranted quick intervention. The Board's abridgment of times and procedures, and its finding of proper service and notice were appropriate in the context of the situation and did not operate as a breach of fairness.

[138] Had the Union appeared at the first hearing, it would have been entitled to present evidence and make submissions. Because it did not (or was denied the opportunity, as it saw it), it

sought the reconsideration hearing. As applicant in that hearing, I presume that the Union agreed to the midday scheduling. The Union wanted the cease and desist order set aside and replaced with a very different order - and it must have wanted that relief quickly. The Union was also seeking urgent resolution of the dispute, but framed as an unlawful lock-out. In doing so, it was pre-empting the tribunal's normally scheduled work, and the tribunal accommodated.

[139] In the circumstances, I see nothing wrong with the Vice-Chair limiting the time for presentations. Many courts do it as a normal part of scheduling, including courts of appeal. The amount of time permitted must be sufficient, depending on the complexity of the matter and the way in which evidence is adduced.

[140] In this case, both parties filed lengthy and detailed outlines of the history of their dispute and its development from their separate perspectives, together with copies of the collective agreement in question, related memoranda, correspondence and other documents. The Chair and Vice-Chair had the benefit of reviewing these materials, and of course the Vice-Chair had the benefit of the materials on both sides at the reconsideration hearing.

[141] The Union and TTC were both free to use their allotted time as they wished. Although it would not have been an efficient use, given the constraints, the Union could have opted to present Mr. Fellows' viva voce testimony. There is also no reason why the Union could not have presented Mr. Fellows' information about the events of the morning of May 29th in affidavit or other written form, had it chosen to do so. It was not a complicated or lengthy account. The competing versions of Mr. Fellows' involvement were easy to summarize orally in a few minutes, as appears to have occurred in any event. Both sides filed affidavits in this proceeding outlining the presentation of the issue before the Vice-Chair. Although the Union may have wanted to present the evidence differently, it appears that the tribunal was informed.

[142] It must be assumed that the Chair and Vice-Chair reviewed all the materials before them. The Vice-Chair referred to the materials in his Decision. He is entitled to considerable deference in his ability to identify the nature and complexity of the dispute, and to assess the time available and necessary to deal with it, given its context, urgency and the need for speedy resolution. The fact that a time limit was imposed does not mean that the Union was denied full opportunity to present evidence and submissions.

F. The Form of Evidence at a Hearing

[143] The Board is within its statutory right [Section 111(2)] to require that evidence be submitted in writing, whether such evidence is admissible in a court of law or not. It is a matter of discretion. The Board can undoubtedly require oral testimony if it finds it necessary to resolve an issue, and presumably it could have done so here too - even after the hearing was underway.

[144] Section 110(16) qualifies the Board's control over its process by requiring it to give parties "full opportunity ... to present their evidence and make their submissions." This court addressed the meaning of "presenting" evidence in Ontario College of Teachers v. Power Workers' Union, [2000] O.J. No. 1334, [2000] O.L.R.B. Rep. 422 (Div. Ct.). In that case, the Board had refused to hear oral evidence in addition to the written materials and oral submissions received. The College sought judicial review on the basis that the refusal was a breach of its rights under Section 110(16) of the Act and a denial of natural justice. After observing that what

amounts to a denial of natural justice depends on the circumstances (infra at paragraph 51), O'Leary J held at paragraph 8 of his Reasons:

> [8] It is to be noted that section 110(16) does not say that a party shall be given the opportunity to "call" evidence, rather, it provides that the party is to have the opportunity to "present" evidence. Here the evidence was presented in submissions and the Board accepted, as proven, all the submissions made. Since even on that basis, the Board was not satisfied that the three Secretaries should be excluded from the bargaining unit, there was no purpose in hearing the evidence from the witnesses. In such circumstances, there is, in my view, no denial of natural justice for the College has, in fact been heard. [Emphasis added]

[145] The Union had the full right of participation in the reconsideration hearing (although I do not conclude there was anything wrong with the initial hearing, given the context of the dispute and the steps taken to inform the Union). The Union was able to put its position and evidence before the decision-maker in a detailed and unrestricted manner in its written materials. It also presented evidence orally in the course of its submissions. Except as to time, it was not restricted at the hearing. It had appropriate and equal opportunity with the TTC to put its position and supporting evidence before the decision maker, and it did so. Its main complaint was that it could not present Mr. Fellows' evidence in a viva voce format.

[146] I conclude that "full opportunity" to present evidence and make submissions does not entitle a party to command the tribunal's process, particularly where the Board has been given specific jurisdiction to determine its own practice and procedure. "Full opportunity" must be assessed in the context of the problem under consideration and surrounding circumstances, which have been discussed extensively in these Reasons. The question is whether the Union had sufficient and fair opportunity to present its evidence and make its position clear to the decision-maker through submissions. In the urgency of the situation, I conclude that it did and that there was no failure of procedural fairness on that account.

[147] The Board was required to afford a high content of procedural fairness. I conclude that it met the standard in the unusual and exigent circumstances of the case before it. The fact of the reconsideration process and other means of resolving the dispute contained in the Act also ameliorated or repaired any fairness concerns that might have existed from the initial hearing, which because of the Act's privative clauses would otherwise have been beyond appeal.

G. Curing Effect of Second Hearing

[148] The Supreme Court of Canada found that a subsequent hearing could cure a defect in an earlier one. In Posluns v. Toronto Stock Exchange (1968), 67 D.L.R. (2d) 165 (S.C.C.) 165 at page 174, Martland J. supported the proposition in adopting Lord Reid's statement in Ridge v. Baldwin [1964] A.C. 40 at page 79:

> I do not doubt that if an officer or body realizes that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present his case, then its later decision will be valid.

[149] If there was a deficiency of fairness in the initial hearing, I am satisfied and find that it was cured by the reconsideration hearing. For the reasons discussed, this second hearing was

fairly conducted and provided the Union with adequate opportunity to put its position to the decision-maker.

VI. General Conclusions and Order

[150] The urgency of the underlying public transportation shutdown justified that immediate steps be taken toward resolution. There was a basis for the adjudicator to find that service had been effected, given the combination of efforts made to deliver the application and notice, the established formal rules of delivery and the Union's relaxed attitude to getting involved when it probably knew urgent measures were being pursued to address an obviously serious situation. The abridging of otherwise normal procedures was justified by the nature of the dispute and the dire consequences of delay.

[151] The second hearing proceeded expeditiously at the Union's initiative and was framed according to its perspective of the dispute. The Union was able to present full written materials that constituted evidence and submissions, and it was able to present further evidence and submissions orally. It was not restricted in putting its complaint, with the evidentiary basis for it, before the Board, and to do so fully and adequately in the context of the urgency underlying its application. It was similarly able to respond to the TTC's complaint at the reconsideration hearing, even though it initially failed to appear.

[152] For all these reasons, the Union's application is dismissed.

[153] In respect of costs, it was agreed at the close of argument that no costs would be sought by the Board nor ordered against it. Since then, counsel for the TTC and Union have advised the Registrar in writing that, as between them, costs would follow the event in the fixed sum of $10,000.00, inclusive of disbursements and GST. It is therefore ordered that the Union pay costs in that amount and on that basis to the TTC.

CASE LISTINGS AUGUST 2007

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING AUGUST 2007

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1436-06-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Nietsch Drywall (Ont.) Inc. Nietsch Drywall (1995) Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Nietsch Drywall (Ont.) Inc. and Nietsch Drywall (1995) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all painters and painters' apprentices in the employ of Nietsch Drywall (Ont.) Inc. and Nietsch Drywall (1995) Inc. in all sectors of the construction industry in the County of Wellington, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (18 employees in unit) *(Clarity Note)*

3106-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Scrubex Floor Maintenance Services Ltd. (Respondent)

Unit: "all construction labourers in the employ of Scrubex Floor Maintenance Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of the Scrubex Floor Maintenance Services Ltd. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham excluding the industrial, commercial and institutional sector of the construction industry, save and except non-working forepersons and persons above the rank of non-working foreperson" (2 employees in unit)

3661-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. ECMI Management Inc. (Respondent)

Unit: "all construction labourers in the employ of ECMI Management Inc. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

4062-06-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Doug Moreau operating as Doug Moreau Drywall and Renovations (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Doug Moreau operating as Doug Moreau Drywall and Renovations in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Doug Moreau operating as Doug Moreau Drywall and Renovations in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0332-07-R: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. Reidco North Ltd. c.o.b. as Reids Uptown Homes (Respondent)

Unit: "all construction labourers in the employ of Reidco North Ltd. c.o.b. as Reids Uptown Homes in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0335-07-R: Labourers' International Union of North America, Local 625 (Applicant) v. Jeff Shepley Excavating Ltd. (Respondent)

Unit: "all construction labourers in the employ of Jeff Shepley Excavating Ltd. in all sectors of the construction industry in the Counties of Essex and Kent, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

0396-07-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. Ceriko Asselin Lombardi Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Ceriko Asselin Lombardi Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Ceriko Asselin Lombardi Inc. in all sectors of the construction industry in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1446-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Accel High Rise Construction Ltd., Freed Corp., Freed Construction Limited, Freed Capital Corp., Freed (Muskoka) Management Ltd., Freed (Muskoka) Ltd., Freed (Fashion District) Developments Ltd., 550 Wellington West Ltd., 550 Wellington West Penthouse One Ltd., 550 Wellington West Penthouse Two Ltd., Accel Construction Management Inc. (Respondents)

Unit: "all construction labourers in the employ of Accel Highrise Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Accel Highrise Construction Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1466-07-R: Plumbers Residential Council, Ontario (Applicant) v. 1679150 Ontario Inc. c.o.b. as Simcoe County Plumbing and Heating (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of 1679150 Ontario Inc. c.o.b. as Simcoe County Plumbing and Heating in all sectors of the construction industry, save and except the industrial, commercial and institutional sector of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1478-07-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. Allmar International (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Allmar International in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Allmar International in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1514-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Oxnard Homes, Oxnard Development Inc. and Oxnard Boxgrove Ltd. (Respondent)

Unit: "all construction labourers, and all carpenters and carpenters' apprentices in the employ of Oxnard Homes, Oxnard Development Inc. and Oxnard Boxgrove Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1529-07-R: Construction Workers Local 6 affiliated with the Christian Labour Association of Canada (Applicant) v. DECC Electrical Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers employed in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (30 employees in unit)

1530-07-R: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Mappi Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Mappi Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all painters and painters apprentices in the employ of Mappi Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham in all other sectors of the construction industry, save and except the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit) *(Clarity Note)*

1658-07-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Applicant) v. JMR Electric Ltd. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices and all sheet metal workers and sheet metal workers' apprentices in the employ of JMR Electric Ltd. in all sectors of the construction industry in the County of Grey, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1661-07-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Thornhill Electric Inc. (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Thornhill Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all

electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Thornhill Electric Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3440-06-R: Canadian Union of Public Employees (Applicant) v. Lennox and Addington Family and Children's Services (Respondent)

Unit: "all employees of Lennox and Addington Family and Children's Services in the County of Lennox and Addington, save and except Supervisors and persons above the rank of Supervisor and Executive Assistant to the Executive Director, lawyers, students and Network Administrator" (47 employees in unit) (Having regard to the agreement of the parties.)

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	3

4121-06-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Rockport Construction Services Inc. (Respondent) v. Construction Workers, Local 52, affiliated with the Christian Labour Association of Canada (Intervener)

Unit: "all construction employees in the employ of Rockport Construction Services Inc. in the Province of Ontario, in all sectors of the construction industry excluding the industrial, commercial and institutional sector all construction labourers in the employ of Rockport Construction Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working forepersons and persons above the rank of non-working foreperson" (10 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	4

0066-07-R: Brick & Allied Craft Union of Canada (Applicant) v. Clifford Masonry Limited/Clifford Restoration Limited (Respondent) v. Operative Plasterers', Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Local Union 598 (Intervener)

Unit: "all masonry restoration employees of the employer in the industrial, commercial and institutional sector of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman and save and except persons covered by a subsisting collective agreement between the Brick and Allied Craft Union of Canada or the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers" (19 employees in unit)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked in favour of intervener	8
Number of ballots segregated and not counted	1

0199-07-R: Labourers' International Union of North America, Local 1059 (Applicant) v. John C. Sweeney o/a John C. Sweeney Concrete Finishing (Respondent)

Unit: "all construction labourers in the employ of John C. Sweeney o/a John C. Sweeney Concrete Finishing in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of John C. Sweeney o/a John C. Sweeney Concrete Finishing in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce, and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0931-07-R: United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. Alamo Linen Rental Ltd., Cadet Cleaners, Meena Cleaners, and Natural Cleaners c.o.b. Dovecorp Enterprises Inc. (Respondent)

Unit: "all employees of DoveCorp Enterprises Inc., located at 35 Suntract Road, in the City of Toronto, save and except the managers, and persons above the rank of manager, office, sales and clerical staff, and students" (222 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	195
Number of persons who cast ballots	177
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	157
Number of segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	4
Number of ballots marked in favour of applicant	109
Number of ballots marked against applicant	64
Number of ballots segregated and not counted	0

1236-07-R: United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. GSS Security Ltd. (Respondent)

Unit: "all employees (security guards) working for GSS Security Ltd., located at National Steel Car, 600 Kenilworth Avenue North, in the city of Hamilton, Ontario, save and except supervisors, managers, and persons above the rank of manager, office, sales and clerical staff, temporary/agency workers and students" (19 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	4

1246-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Flint Packaging Products Ltd. (Respondent)

Unit: "all employees of Flint Packaging Products Ltd. in the City of Vaughan, Ontario, save and except supervisor(s), persons above the rank of supervisor, office, clerical and sales staff and students employed for the school vacation period" (31 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

1351-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. McMaster University (Respondent)

Unit: "all Special Constables in the employ of McMaster University at its main campus, save and except sergeants and persons above the rank of sergeant" (14 employees in unit) *(Clarity Note) (Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1412-07-R: United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. Canadian Opera House Corporation (Respondent)

Unit: "all security guards employed by the Canadian Opera House Corporation, located at 145 Queen Street West, in the City of Toronto, Ontario, save and except supervisors and persons above the rank of supervisor, office, sales and clerical staff, agency workers and students" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

1467-07-R: Ontario Public Service Employees Union (Applicant) v. Ontario March of Dimes (Respondent)

Unit: "all employees of Ontario March of Dimes in the City of Oakville save and except Support Delivery Worker and Community Support Leader, Supervisors and persons above the rank of Supervisor" (34 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

1523-07-R: Canadian Union of Public Employees (Applicant) v. The City of Ottawa (Respondent)

Unit: "all students employed by The City of Ottawa in the Public Works and Services Department in the City of Ottawa save and except those persons employed with Transit Services, persons covered under an existing collective agreement, supervisors, persons above the rank of supervisor" (300 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	406
Number of persons who cast ballots	54
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54

Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	42
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	0

1539-07-R: Christian Labour Association of Canada (Applicant) v. Ontario RediMix Ltd. (Respondent)

Unit: "all employees of Ontario RediMix Ltd., in the City of Hamilton, Ontario, save and except non-working foreman, persons above the rank of non-working foreman, dispatchers/batchers, mechanics, brokers and office and sales staff" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1540-07-R: Christian Labour Association of Canada (Applicant) v. Ontario RediMix Ltd. (Respondent)

Unit: "all employees of Ontario RediMix Ltd., in the City of Toronto, Ontario, save and except non-working foreman, persons above the rank of non-working foreman, dispatchers/batchers, mechanics, brokers and office and sales staff" (49 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	49
Number of persons who cast ballots	43
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	40
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	39
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	1

1547-07-R: Christian Labour Association of Canada (Applicant) v. Ontario RediMix Ltd. (Respondent)

Unit: "all employees of Ontario RediMix Ltd., in the Town of Pickering, Ontario, save and except non-working foreman, persons above the rank of non-working foreman, dispatchers/batchers, mechanics, brokers and office and sales staff" (22 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names	18

appear on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1548-07-R: Christian Labour Association of Canada (Applicant) v. Ontario RediMix Ltd. (Respondent)

Unit: "all employees of Ontario RediMix Ltd., in the Town of Milton, Ontario, save and except non-working foreman, persons above the rank of non-working foreman, dispatchers/batchers, mechanics, brokers and office and sales staff" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

2046-06-R: Labourers' International Union of North America, Local 625 (Applicant) v. Albamor Construction & Engineering Ltd. and, Arcas Construction Ltd. (Respondents)

1112-07-R: Canadian Construction Workers' Union (Applicant) v. Queensgate Homes Inc. (Respondent) v. Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Intervener)

Applications for Certification Dismissed Subsequent to Vote

1929-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. The Alterra Group of Companies and/or Alterra-Finer (Chateau Parc) Ltd. and/or Alterra-Finer (Network Lofts) Ltd. (Respondent)

Unit: "all construction labourers in the employ of the responding party in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durhamin all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

1097-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ideal Railings Ltd. (Respondent)

Unit: "all employees of Ideal Railings Ltd. working in the City of Mississauga, save and except foremen, persons above the rank of foreman and office, sales and clerical staff" (35 employees in unit)

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	10
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	0

1237-07-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. P.H.E. Contractor Sales Ltd. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and cable installers in the employ of P.H.E. Contractor Sales Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and cable installers in the employ of P.H.E. Contractors Sales Ltd. in all other sectors of the construction industry in the the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand; City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, save and except non-working foremen and persons above the rank of non working foreman" (51 employees in unit)

Number of names of persons on revised voters' list	72
Number of persons who cast ballots	66
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	50
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	39
Number of ballots segregated and not counted	5

1341-07-R: Canadian National Federation of Independent Unions (Applicant) v. Milestone's Restaurant Inc. (Respondent)

Unit: "all employees of Milestone's Restaurant Inc. located in Etobicoke Ontario, save and except variable managers and persons above the rank of manager" (82 employees in unit)

Number of names of persons on revised voters' list	81
Number of persons who cast ballots	63
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	59
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	43
Number of ballots segregated and not counted	3

1387-07-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. A C Electrical Contractors Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of A C Electrical Contractors Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of A C Electrical Contractors Ltd. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (22 employees in unit)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	4

1402-07-R: Hotel, Hospitality and Casino Workers Union (Applicant) v. Fallsview Niagara Lodging Company c.o.b. as Radisson Hotel & Suites Fallsview (Respondent)

Unit: "all employees of Fallsview Niagara Lodging Company, carrying on business as the Radisson Hotel, located at 6733 Fallsview Blvd., Niagara Falls, ON, save and except supervisors, persons above the rank of supervisor, office and sales staff, reservation clerks, front desk staff, payroll clerks, audit department staff, secretaries and security staff" (9 employees in unit)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	17

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	7

1463-07-R: Hotel, Hospitality and Casino Workers Union (Applicant) v. Wilshire Group Inc. (Respondent)

Unit: "all employees of Wilshire Group Inc. carrying on business as the "Staybridge Suites" located at 118 Market Street, Hamilton, ON., save and except supervisors, persons above the rank of supervisors, office and clerical, sales staff, reservation clerks, front desk staff, guest services representatives, payroll clerks, audit department staff, secretaries, and security staff." (18 employees in unit)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	2

Applications for Certification Withdrawn

3446-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Proforma Canada Inc. (Respondent)

3728-06-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Whitby Industrial Maintenance Ltd. (Respondent)

0386-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Millenium Carpentry (Respondent) v. Central Ontario Regional Council of Carpenters, Drywall and Allied Workers United Brotherhood of Carpenters and Joiners of America (Intervener)

0909-07-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cambridge Drywall Services Ltd. (Respondent)

1042-07-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westway Electrical Contractors Inc. c.o.b. as Insta-All Electrical Contractors (Respondent)

1115-07-R: Canadian Construction Workers' Union (Applicant) v. Tri-Star Landscaping Inc. (Respondent)

1172-07-R: Canadian Union of Public Employees (Applicant) v. The United Church of Canada (Respondent)

1520-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. William Neilson Ltd./Ltee (Respondent) v. Christian Labour Association of Canada (Intervener)

1521-07-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Design Electrical Contractors Corp. (Respondent) v. Construction Workers Local 6 affiliated with the Christian Labour Association of Canada (Intervener)

1535-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. KCL Contracting & Engineering Ltd. and 1481277 Ontario Limited (Respondent)

1691-07-R: Hotel, Hospitality and Casino Workers Union (Applicant) v. Embassy Suites Hotel Niagara Falls - Fallsview (Respondent)

FIRST AGREEMENT - DIRECTION

1294-07-FC: Communications, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newsmedia Guild (Applicant) v. World Journal (Daily News) Inc. (Respondent) (Withdrawn)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

3963-05-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. SNC-Lavalin Profac Inc. and SNC-Lavalin Inc. (Respondents) (Withdrawn)

1958-06-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Nietsch Drywall (Ont.) Inc., Nietsch Drywall (1995) Inc. (Respondent) (Withdrawn)

2689-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, UA Local 787 (Applicant) v. Display Fixtures, a division of Westfair Foods Ltd.;, Loblaw Companies Limited; and National Grocers Co. Ltd. (Respondents) (Withdrawn)

2874-06-R: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ante Milos c.o.b. as Hi Tech Aluminum and Hi Tech Aluminum Inc. (Respondents) (Withdrawn)

3261-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. T.A.G.A. Contracting Inc. o/a T.A.G.A. Contracting Limited and/or T.A.G.A. Contracting Ltd. and T.A.C.S. Construction Ltd. (Respondents) v. Canadian Construction Workers' Union (Intervener) (Granted)

4041-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Bramalea Fire Protection Systems Co. Ltd. and/or, Bramalea Fire Systems Co. Ltd. and/or , Collins Fire Systems Co. Ltd. and/or, Collins Fire Protection Company Ltd. and/or, Richmond Fire Systems Ltd. and/or, Richmond Fire Systems & Services Co. Ltd. (Respondents) (Endorsed Settlement)

0541-07-R: Teamsters International Union, Local 847 (Applicant) v. Galbocca Fixtures Inc. and Obara Enterprises Inc. (Respondents) (Withdrawn)

1124-07-R: International Brotherhood of Electrical Workers, Locals 353 and 1739 (Applicant) v. Kennedy Electric Limited, Kennedy Automation Limited, RKO Automated Solutions Ltd. and Max Automated Processing Limited (Respondents) (Endorsed Settlement)

1247-07-R: Drywall Acoustic Lathing and Insulation Local 675 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Walter Gradascevic c.o.b. as City Interior Contracting and Vahid Gradascevic c.o.b. as City Interior Construction/Redstone Construction Ltd. and United Interior Construction Ltd. (Respondents) (Endorsed Settlement)

SALE OF A BUSINESS

3963-05-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. SNC-Lavalin Profac Inc. and SNC-Lavalin Inc. (Respondents) (Withdrawn)

1958-06-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Nietsch Drywall (Ont.) Inc., Nietsch Drywall (1995) Inc. (Respondent) (Withdrawn)

2689-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, UA Local 787 (Applicant) v. Display Fixtures, a division of Westfair Foods Ltd.; Loblaw Companies Limited; and, National Grocers Co. Ltd. (Respondents) (Withdrawn)

2874-06-R: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ante Milos c.o.b. as Hi Tech Aluminum and Hi Tech Aluminum Inc. (Respondents) (Withdrawn)

3261-06-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. T.A.G.A. Contracting Inc. o/a T.A.G.A. Contracting Limited and/or T.A.G.A. Contracting Ltd. and, T.A.C.S. Construction Ltd. (Respondents) v. Canadian Construction Workers' Union (Intervener) (Granted)

4041-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Bramalea Fire Protection Systems Co. Ltd. and/or Bramalea Fire Systems Co. Ltd. and/or Collins Fire Systems Co. Ltd. and/or Collins Fire Protection Company Ltd. and/or Richmond Fire Systems Ltd. and/or Richmond Fire Systems & Services Co. Ltd. (Respondents) (Endorsed Settlement)

0541-07-R: Teamsters International Union, Local 847 (Applicant) v. Galbocca Fixtures Inc. and Obara Enterprises Inc. (Respondents) (Withdrawn)

1124-07-R: International Brotherhood of Electrical Workers, Locals 353 and 1739 (Applicant) v. Kennedy Electric Limited,, Kennedy Automation Limited, RKO Automated Solutions Ltd. and Max Automated Processing Limited (Respondents) (Endorsed Settlement)

1247-07-R: Drywall Acoustic Lathing and Insulation Local 675 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Walter Gradascevic c.o.b. as City Interior Contracting and Vahid Gradascevic c.o.b. as City Interior Construction/Redstone Construction Ltd. and United Interior Construction Ltd. (Respondents) (Endorsed Settlement)

UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

1080-07-R: United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada, Local Union 71 (Applicant) v. United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of the United States and Canada, Local 819, Mechanical Contractors Association of Ontario (Respondents) (Granted)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3754-06-R: David Larin, on his own behalf and on behalf of A group of employees of Larin Sheet Metal Inc. (Applicant) v. Sheet Metal Workers' International Association and Ontario Sheet Metal Workers' Conference for Local 47 (Respondent) v. 575454 Ontario Inc. (o/a Larin Sheetmetal Inc.) (Intervener) (Withdrawn)

Unit: "certified journeyman sheet metal worker or registered apprentice, as well as sheeter/decker, welder, sheeter's assistant, material handler and probationary employee engaged in the sheeting and decking segment of the sheet metal industry, recognized by the local union and employed in the shop or on the job site except as otherwise specifically provided in this Collective Agreement" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	0

3948-06-R: Michael Wilson (Applicant) v. Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, Local 27 and 2486 (Respondents) v. 1211384 Ontario Inc. o/a MTR Construction (Intervener) (Withdrawn)

Unit: "Unit 1 all journeymen and apprentice carpenters, other than millwrights who are employed by MTR Construction, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario Unit 2 all journeymen and apprentice carpenters, other than millwrights, employed by MTR Construction engaged in all sectors of the construction industry other than the industrial, commercial and institutional sector of the construction industry in the County of Simcoe and the District Municipality of Muskoka" (10 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

0076-07-R: Chris Moon an employee of Simcoe York Electric (Applicant) v. International Brotherhood of Electrical Workers, Local 1739 (Respondent) v. 894907 Ontario Ltd. o/a Simcoe York Electric (Intervener) (Granted)

Unit: "all foremen, journeyman, wiremen, instrumentation electricians, apprentices, pre-apprentices, journeyman, linesmen-splicers, apprentice linesmen-splicers, groundman/equipment operators, groundman/drivers, groundmen, utilitymen, foresters, communication electricians, journeymen and apprentice network cabling specialists/communication technicians, and communication cable installers in the employ of 894907 Ontario Ltd. o/a Simcoe York Electric in all sectors of the construction industry and for non-construction work in the Province of Ontario." (1 employees in unit)

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

0143-07-R: Vadym Martynenko (Applicant) v. International Union of Painters and Allied Trades, Local Union 1891 (Respondent) v. Com-Kote Interiors Inc. (Intervener) (Granted)

Unit: "All painters and painters' apprentices in the employ of the responding party in the residential sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	0

0330-07-R: Tom Dawson (Applicant) v. Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, Local 27, Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, Local 2486 (Respondents) v. MTR Construction (Intervener) (Granted)

Unit: "Unit 1 all journeymen and apprentice carpenters, other than millwrights who are employed by MTR Construction, engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario. Unit 2 all journeymen and apprentice carpenters, other than millwrights, employed by MTR Construction engaged in all sectors of the construction industry other than the industrial, commercial and institutional sector of the construction industry in the County of Simcoe and the District Municipality of Muskoka." (9 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	5
Number of ballots segregated and not counted	4

0381-07-R: Ivan Krtanjek (Applicant) v. L.I.U.N.A. (Respondent) v. Canning Construction Limited (Intervener) (Granted)

Unit: "all construction labourers, including masons' or bricklayers' tenders, plasterers and plasterers' apprentices and all employees engaged in cement finishing, waterproofing or restoration work and all other construction employees engaged in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario." (2 employees in unit)

1404-07-R: Julia Potts/Anne-Marie MacDougall (Applicant) v. CAW Local 302 (Respondent) v. Steeves & Rozema Enterprises Inc. c.o.b. as Twin Lakes Terrace Retirement Residence (Intervener) (Granted)

Unit: "all employees of Twin Lakes Terrace Retirement Community at Sarnia, in the City of Sarnia, save and except supervisors, persons above the rank of supervisor, registered nurses, office, clerical and marketing staff and Activity Director" (28 employees in unit)

1498-07-R: Jason Churchley (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union CAW (Respondent) (Granted)

1522-07-R: Marcus Mayne (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 199 (Respondent) v. Ed Learn Ford Sales Ltd. (Intervener) (Dismissed)

Unit: "all employees of Ed Learn Ford Sales Ltd. at St. Catharines, save and except supervisors, persons above the rank of supervisor, new and used car salespersons, service salespersons, outside part salespersons, control tower staff, office staff, and employees working regularly less than twenty-four (24) hours per week" (26 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	19
Number of ballots marked against respondent	8
Number of ballots segregated and not counted	0

1680-07-R: David Morley (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council, Local 1036 (Respondent) (Withdrawn)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

0543-04-U: Giuseppe Norcini (Applicant) v. York University (Respondent) (Dismissed)

2136-05-U: Communications, Energy and Paperworkers Union of Canada Local 87-M Southern Ontario Newspaper Guild and Robert Reid (Applicant) v. Citymedia Group Inc. and The Kitchener-Waterloo Record, a Division of Citymedia Group Inc. (Respondents) (Withdrawn)

3251-05-U: Milan Becvar (Applicant) v. Canadian Union of Public Employees, Local 1750 (Respondent) v. Workplace Safety and Insurance Board (Intervener) (Withdrawn)

0604-06-U: United Food and Commercial Workers Union, Local 1993 (UFCW Local 1993) (Applicant) v. Georgia-Pacific (Respondent) (Withdrawn)

0711-06-U: International Union of Operating Engineers, Local 793 (Applicant) v. Konecranes Canada Inc. o/a Crane Pro Services (Respondent) (Withdrawn)

1896-06-U: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Applicant) v. Dunn Paving Limited and 658620 Ontario Limited (c.o.b. as Haul-All Services) (Respondent) (Withdrawn)

2691-06-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, UA Local 787 (Applicant) v. Display Fixtures, a division of Westfair Foods Ltd.; Loblaw Companies Limited; and National Grocers Co. Ltd. (Respondents) (Withdrawn)

2991-06-U: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. The Alterra Group of Companies, Alterra-Finer (Chateau Parc) Ltd., Alterra-Finer (Network Lofts) Ltd., Alterra Developments 2000 Ltd. and Robert Cooper (Respondent) (Dismissed)

3071-06-U: Paul L. Stewart (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Drywall Acoustic Lathing and Insulation, Local 675 (Respondent) (Dismissed)

3234-06-U: Patrick McGuinty (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union (United Steelworkers), Local 6946 (Respondent) v. Trimag, S.E.C. (Intervener) (Withdrawn)

3731-06-U: Manuel Ventura Abreu (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Respondent) (Dismissed)

3841-06-U: Joe Furlano (Applicant) v. Canadian Union of Public Employees Local 1280 (Respondent) v. Toronto Catholic District School Board (Intervener) (Dismissed)

3941-06-U: Darien Collins, National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada) (Applicant) v. Canadian Union of Public Employees (Respondent) v. Durham Region Transit Commission (Intervener) (Withdrawn)

4004-06-U: Ted Laskowski (Applicant) v. The Society of Energy Professionals (Respondent) v. Ontario Power Generation Inc. (Intervener) (Dismissed)

4146-06-U: Nancy Snoddon (Applicant) v. Ontario Provincial Police Association (Respondent) v. The Crown in Right of Ontario as represented by the Ministry of Community Safety and Correctional Services (Intervener) (Withdrawn)

0015-07-U: Yvonne Headley (Applicant) v. Service Employees International Union Local 2.on (Intervener) (Dismissed)

0187-07-U: Roland Ladoceur (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) v. Morbern Inc. (Intervener) (Dismissed)

0316-07-U: Les employés de la cuisine, de l'entretien et de la buanderie CSLD Montfort (Applicant) v. Universal Workers' Union, Labourers' International Union of North America, Local 183 (Respondent) v. Nova Services Group Inc. (Intervener) (Withdrawn)

0564-07-U: Canadian Union of Public Employees (Applicant) v. Lennox and Addington Family and Children's Services (Respondent) (Withdrawn)

0692-07-U: Andrew Tremblay (Applicant) v. Steelworkers Union (Respondent) v. Norbord Inc. (Intervener) (Withdrawn)

0722-07-U: Labourers' International Union of North America, Local 1059 (Applicant) v. John C. Sweeney o/a John C. Sweeney Concrete Finishing (Respondent) (Withdrawn)

0986-07-U: Mansoor Ahmed Butt (Applicant) v. Universal Workers Union, L.I.U.N.A. Local 183 (Respondent) (Withdrawn)

0997-07-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Coldstream Concrete Limited (Respondent) (Terminated)

1075-07-U: Tommy Gareri (Applicant) v. The City of Mississauga (Respondent) (Dismissed)

1101-07-U: Heather Cook (Applicant) v. Canadian Union of Public Employees and its Local 1880 (Respondent) v. Community Living Algoma (Intervener) (Dismissed)

1346-07-U: Jaspal Dhillon (Applicant) v. Canadian Union of Postal Workers (Respondent) (Dismissed)

1347-07-U: Canadian National Federation of Independent Unions (Applicant) v. Milestone's Restaurant Inc. (Respondent) (Withdrawn)

1376-07-U: Michael Aube (Applicant) v. Halton District School Board (Respondent) (Dismissed)

1410-07-U: Sandro Ferrantone (Applicant) v. United Food and Commercial Workers Canada, Local 1000A (Respondent) v. The Real Canadian Superstore (Intervener) (Withdrawn)

1449-07-U: Service Employees International Union, Local 1.on (Applicant) v. St. Michael's Homes (Respondent) (Withdrawn)

1473-07-U: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Hoodex Industries Limited o/a H.W. & Associates Janitorial Services (Respondent) (Withdrawn)

1476-07-U: Bikram Singh (Applicant) v. International Association of Machinists and Aerospace Workers Transportation District 140, and Local Lodge 2323 (Respondent) (Dismissed)

1488-07-U: Ontario Public Service Employees Union (Applicant) v. Community Living Prince Edward (Respondent) (Withdrawn)

1509-07-U: Wayne Edward Tanner (Applicant) v. Canadian Union of Public Employees Local 1176 (Respondent) (Withdrawn)

1559-07-U: Stephanie Desormeaux (Applicant) v. Jim Harris/XS Cargo Ltd. (Respondent) (Dismissed)

JURISDICTIONAL DISPUTES

3621-04-JD: Ontario Council of the International Union of Painters & Allied Trades, International Union of Painters & Allied Trades Local Union 1891 (Applicant) v. Squire Masonry Ltd., Uroseal Insulation Inc., International Union of Bricklayers and Allied Craftsmen Local 2/Brick and Allied Craft Union of Canada Local 2 (Respondents) v. Interior Systems Contractors Association (Intervener) (Granted)

0316-06-JD: Labourers' International Union of North America, Local 493 (Applicant) v. R.M. Belanger Limited; Belanger Construction (1981) Inc., United Brotherhood of Carpenters and Joiners of America, Local 2486, 1365632 Ontario Limited o/a Furoy's Insulation (Respondents) (Dismissed)

1668-06-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 (Applicant) v. TESC Contracting Company Ltd., United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 800 (Respondents) (Granted)

3812-06-JD: International Union of Painters and Allied Trades, Glaziers Local 1819 (Applicant) v. Ellis-Don/Carillion Joint Venture, Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America, Architectural Millwork & Door Installations Inc., Continental Cabinet Company Inc., AFG Industries Ltd. (Respondents) (Dismissed)

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

1793-06-M: Health, Office & Professional Employees, a Division of United Food & Commercial Workers, Local 175 (Applicant) v. Coleman Care Centre (Respondent) (Withdrawn)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

2371-06-OH: Canadian Union of Public Employees, Local 4400 (Applicant) v. Toronto District School Board (Respondent) (Withdrawn)

2485-06-OH: Rosemarie Hutson (Applicant) v. Suds Express Inc. (Respondent) (Dismissed)

3299-06-OH: Randall Gary Blais (Applicant) v. CVRD Inco Ltd. (Respondent) (Withdrawn)

3935-06-OH: Joe Massa (Applicant) v. Spar Marathon Craig Glynn, President (Respondent) (Dismissed)

3955-06-OH: Frank Docherty (Applicant) v. Lear Corporation (Whitby) (Respondent) (Dismissed)

4143-06-OH: Nancy Snoddon (Applicant) v. The Crown in Right of Ontario as represented by the Ministry of Community Safety and Correctional Services (Respondent) (Withdrawn)

0129-07-OH: Robert B. Langlois (Applicant) v. Russel Metals Inc. (Respondent) (Dismissed)

1010-07-OH: Ronald William Breutigam (Applicant) v. ATS Automation Tooling Systems Inc. (Respondent) (Withdrawn)

1212-07-OH: Leonard Norman Geno (Applicant) v. Alliance Environmental & Abatement Contractors Inc. (Respondent) (Withdrawn)

1336-07-OH: Steven Alaimo (Applicant) v. Sobey's Inc. (Respondent) (Withdrawn)

CONSTRUCTION INDUSTRY GRIEVANCES

2217-06-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Ellis Don (Respondent) (Endorsed Settlement)

2428-06-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ante Milos c.o.b. as Hi Tech Aluminum (an unregistered business name) (Respondent) (Withdrawn)

2481-06-G: Canadian Union of Skilled Workers (Applicant) v. Strabag Inc. (Respondent) (Endorsed Settlement)

2690-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, UA Local 787 (Applicant) v. Display Fixtures, a division of Westfair Foods Ltd.; Loblaw Companies Limited; and, National Grocers Co. Ltd. (Respondents) (Withdrawn)

4040-06-G; 4128-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Bramalea Fire Protection Systems Co. Ltd. and/or, Collins Fire Systems Co. Ltd. and/or , Collins Fire Protection Company Ltd. and/or, Bramalea Fire Systems Co. Ltd. and/or, Richmond Fire Systems Ltd. and/or, Richmond Fire Systems & Services Co. Ltd. (Respondents) (Endorsed Settlement)

4191-06-G; 0137-07-G: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Kennedy Electric Ltd. and Max Automated Processing Limited (Respondents); International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Kennedy Electric Limited and, Max Automated Processing Limited (Respondents) (Endorsed Settlement)

0839-07-G: Labourers' International Union of North America, Local 1089 (Applicant) v. Concrete Systems Ltd. (Respondent) (Withdrawn)

0874-07-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Ellis Don Corporation (Respondent) (Endorsed Settlement)

0897-07-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. 1198934 Ontario Inc. o/a Basic Structure Engineering Glazing Contractors (Respondent) (Granted)

0915-07-G: I.B.E.W. Construction Council of Ontario (Applicant) v. E.S. Fox Limited (Respondent) (Terminated)

0917-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers on its own behalf and on behalf of its Local 721 (Applicant) v. Cult Iron Works Ltd. (Respondent) (Endorsed Settlement)

1060-07-G: Sheet Metal Workers' International Association, Local 562 (Applicant) v. Trade-Mark Industrial Inc. (Respondent) (Granted)

1126-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Ellis Don Corporation (Respondent) (Withdrawn)

1214-07-G: Quality Control Council of Canada (Applicant) v. Acuren Group Inc. (Respondent) (Withdrawn)

1255-07-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. FTT Construction Ltd. (Respondent) (Granted)

1291-07-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Direct Drilling Ltd. (Respondent) (Withdrawn)

1338-07-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Extreme Insulation Ltd. (Respondent) (Endorsed Settlement)

1388-07-G: Sheet Metal Workers' International Association, Local 235 (Applicant) v. Cladding Experts Inc. (Respondent) (Granted)

1423-07-G: Greater Ontario Regional Council of Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Titan Contracting (Windsor) Incorporated (Respondent) (Endorsed Settlement)

1424-07-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Skywall Systems Inc. and The Sky Construction Inc. (Respondent) (Granted)

1438-07-G: Greater Ontario Regional Council of Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Titan Contracting (Windsor) Incorporated (Respondent) (Endorsed Settlement)

1439-07-G: Greater Ontario Regional Council of Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Titan Contracting (Windsor) Incorporated (Respondent) (Endorsed Settlement)

1440-07-G: Greater Ontario Regional Council of Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Titan Contracting (Windsor) Incorporated (Respondent) (Endorsed Settlement)

1460-07-G: Greater Ontario Regional Council of Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Titan Contracting (Windsor) Incorporated (Respondent) (Endorsed Settlement)

1461-07-G: Greater Ontario Regional Council of Carpenters & Allied Workers, United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Titan Contracting (Windsor) Incorporated (Respondent) (Endorsed Settlement)

1481-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Pro-Bel Enterprises Ltd. (Respondent) (Granted)

1499-07-G: Construction and Allied Workers Local Union 607 (Applicant) v. Leo Alarie & Sons Limited (Respondent) (Withdrawn)

1510-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. City of Toronto (Respondent) (Withdrawn)

1518-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. AMF All-Metal Fabricating Limited (Respondent) (Withdrawn)

1563-07-G: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Medway Contracting Group Inc./Medway Electric Ltd. (Respondent) (Granted)

1565-07-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Bytown Woodworking & Display Inc. (Respondent) (Granted)

1594-07-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Honeywell Limited (Respondent) (Withdrawn)

1616-07-G: International Union of Operating Engineers, Local 793 (Applicant) v. Akman Construction Inc. (Respondent) (Granted)

1636-07-G: Bricklayers, Masons Independent Union of Canada, Local 1 and Universal Workers Union, L.I.U.N.A. Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. 1564709 Ontario Inc. o/a Pedreira Bricklayers (Respondent) (Granted)

1638-07-G: United Brotherhood of Carpenters and Joiners of America, Local 1256 (Applicant) v. Facca Incorporated (Respondent) (Terminated)

1644-07-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Bruce Power LP (Respondent) (Terminated)

1645-07-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Woodward Drywall & Interiors Ltd. (Respondent) (Granted)

1676-07-G: Labourers' International Union of North America, Local 493 (Applicant) v. Tambeau Construction Ltd. (Respondent) (Granted)

APPEALS - EMPLOYMENT STANDARDS ACT

0876-04-ES: Sears Canada Inc. (Applicant) v. Antonella Salemi and Director of Employment Standards (Respondents) (Granted)

2598-05-ES; 2600-05-ES: Carla DiDomenico a Director of 30 Minute Fitness and Gym (Applicant) v. Kathie Carpenter and Director of Employment Standards (Respondents); Carla DiDomenico a Director of 30 Minute Fitness And Gym (Applicant) v. Jennifer Hall and Director of Employment Standards (Respondents) (Withdrawn)

2813-05-ES: Adecco Employment Services (Applicant) v. Director of Employment Standards (Respondent) (Withdrawn)

0691-06-ES: Sievenpiper Associates Inc. (Applicant) v. Stephen Pollock and Director of Employment Standards (Respondents) (Endorsed Settlement)

0765-06-ES: Karel Michalica (Applicant) v. Prof. Andrew G. Reynolds - Brock University and Director of Employment Standards (Respondents) (Dismissed)

1270-06-ES: Luis J. Restrepo, a Director of Stoptek Friction Inc. (Applicant) v. Ana Amaya, Falah Hanna, Mauricio Andrade, Pravin Patel, Praful Patel, Kishorkumar Patel, Riteshkumar Patel and Director of Employment Standards (Respondents) (Dismissed)

1605-06-ES: Ninian Prabhu (Applicant) v. Inter-Cultural Neighbourhood Social Services and Director of Employment Standards (Respondents) (Endorsed Settlement)

2114-06-ES: Metalsmiths Master Architects of Jewelry Inc. (Applicant) v. Lisa Makowka and Director of Employment Standards (Respondents) (Dismissed)

2136-06-ES: 1248653 Ontario Inc., Personalized Credit Corporation (Applicant) v. Jean Francois De Blois and Director of Employment Standards (Respondents) (Dismissed)

2228-06-ES: Penny Ranger (Applicant) v. NCO Customer Management Ltd., Director of Employment Standards (Respondents) (Endorsed Settlement)

2353-06-ES: Samir I.A. Abou Zad a Director of 952339 Ontario Limited o/a Cedar Grove School (Applicant) v. Sarah Harris,, Aaron Harris,, Robert Pollioni,, P. Lisa Gerosa and Director of Employment Standards (Respondents) (Dismissed)

2360-06-ES: Emily Tosswill (Applicant) v. Ciavone Investments Limited operating as Canadian Tire, Director of Employment Standards (Respondents) (Endorsed Settlement)

2883-06-ES: Star Travel and Cruise Ltd. (Applicant) v. Azadeh Nasouti, Samira Bidgoli, Julietta Yakubov, Betti Khardas, Sukanthy Chanpotsothi, Nasim Salamati, Mahyar Khademzadeh and, Director of Employment Standards (Respondents) (Withdrawn)

3000-06-ES: Harry H. Snape (Applicant) v. Marigold Ford Lincoln, Director of Employment Standards (Respondents) (Withdrawn)

3200-06-ES: Circa Metals Inc. (Applicant) v. Yiming Jin and Director of Employment Standards (Respondents) (Endorsed Settlement)

3281-06-ES; 3282-06-ES: Riccardo Arcese, a director of Arcese Inc. (Applicant) v. Ana Alves, Phansy, et al, and the Director of Employment Standards (Respondents); Giuseppe Trimboli, a director of Arcese Inc. (Applicant) v. Ana Alves, Phansy Anusawat, et al, and the Director of Employment Standards (Respondents) (Dismissed)

3283-06-ES: Giuseppe Arcese, a director of Giuseppe Arcese Furniture Limited (Applicant) v. Thayaparan Thuraisingam, Tran Vien, et al and Director of Employment Standards (Respondents) (Dismissed)

3375-06-ES: 1223984 Ontario Ltd. (Applicant) v. Director of Employment Standards (Respondent) (Withdrawn)

3381-06-ES: Boris Mironov (Applicant) v. 4049250 Canada Inc. o/a The Vegas Bar and Restaurant and Director of Employment Standards (Respondents) (Terminated)

3515-06-ES: Terry Liska (Applicant) v. Worldwide Sleepcenter and Director of Employment Standards (Respondents) (Endorsed Settlement)

3560-06-ES: Progressive Moulded Products Ltd. (Applicant) v. Francis Kwaku-Berko and Director of Employment Standards (Respondents) (Endorsed Settlement)

3573-06-ES: Perma Trading (1988) Corp. (Applicant) v. Ming Zhu and Director of Employment Standards (Respondents) (Endorsed Settlement)

3654-06-ES; 3701-06-ES: Richard Miller (Applicant) v. Sofilia Logistics Inc. and Director of Employment Standards (Respondents) (Withdrawn)

3744-06-ES: 1456560 Ontario Limited o/a Wacky Wizard #3 (Applicant) v. Kathy Morrison and Director of Employment Standards (Respondents) (Endorsed Settlement)

3768-06-ES: Allan Manessy operating as Fitness Plus (Applicant) v. Shauna Hickey and Director of Employment Standards (Respondents) (Endorsed Settlement)

3858-06-ES: 3499481 Canada Inc. o/a Super Pet (Applicant) v. Tania Halverson, Director of Employment Standards (Respondents) (Endorsed Settlement)

3914-06-ES: Cross Country Service Corp. of Canada (Applicant) v. Barbara Peltsch and Director of Employment Standards (Respondents) (Endorsed Settlement)

4018-06-ES: Adecco Employment Services Limited (Applicant) v. Director of Employment Standards (Respondent) (Withdrawn)

4025-06-ES: Marisa Artuso (Applicant) v. Dr. Maurice Davis and Director of Employment Standards (Respondents) (Withdrawn)

4083-06-ES: 821743 Ontario Inc. (Applicant) v. Wayne Shae and Director of Employment Standards (Respondents) (Endorsed Settlement)

4105-06-ES: Kevin A. Watkinson, a Director of Regal Greetings & Gifts Corporation (Applicant) v. Tassius Anderson, Patricia Balfour, Angela Benincasa, Jules C. Bissessarsingh, Angel Brady, Margaret Burgess, Michel Burley, Ann Callan, Patricia Carroll, Beverley Corriero, Robert Coulson, David Craik, Jane-Ann Danyluk, Maureen Dmytriw, Geraldine Dunatov, Diana Duncan, Cindy Eveland, Stephen Gill, Helen Graham, Paul Grise, Cathy Haefling, Angela Haroulakis, Leona Haycock, Qaiser Hoda, Chi-Mei Huang, Narinder Jandu, Brenda Jenkins, Mariam Jeyanandan, Lemona Johnson, Ben Kucway, Dulcie Lakhan, Esther Lashley, Joanne Lefebvre, Helen Letourneau, Vicki Lewis, Rachelle Little, Maureen Lumsden, Mary Marsilla, Jennifer Matthews, Barbara McArdle, Karen McCullough, Shirley McKenzie, Heather Mitchell, Rakesh Modgil, Kathryn Nadeau, Francesco Nesci,

Margaret Payne, Dianne Piper, Jahanara Prodhan, Nadira Raghunandan-Dyal, Sharon Rathe, Sandra Richards, Constance Ridout, Krysten Schonnop, Jose Singson, Trudy Smith, Deni se Snyder, Debra Stemplowski, Diane Taylor, Berthlyn Thompson, Sriragurajah Thuraisamy, Peter Tseng, Stafford Whalen, Ann Marie Williams, Eddie Wong, Meraldene Zadow, Director of Employment Standards (Respondents) (Withdrawn)

4139-06-ES: 1366797 Ontario Limited operating as Smart Mart (Applicant) v. Kim Rhyndress and Director of Employment Standards (Respondents) (Dismissed)

0023-07-ES: Tim Horton's (Applicant) v. Ashley McPherson and Director of Employment Standards (Respondents) (Endorsed Settlement)

0043-07-ES: Claudia Bandhu (Applicant) v. Canadian Bonded Credits Ltd. and Director of Employment Standards (Respondents) (Endorsed Settlement)

0205-07-ES: Powco Steel Products Limited (Applicant) v. Normand Low and Director of Employment Standards (Respondents) (Withdrawn)

0206-07-ES: Powco Steel Products Limited (Applicant) v. Anthony Lockerbie and Director of Employment Standards (Respondents) (Withdrawn)

0207-07-ES: Powco Steel Products Limited (Applicant) v. Mauro Manzato and Director of Employment Standards (Respondents) (Withdrawn)

0208-07-ES: Powco Steel Products Limited (Applicant) v. Wayne Osborne and Director of Employment Standards (Respondents) (Withdrawn)

0209-07-ES: Powco Steel Products Limited (Applicant) v. Craig Page and Director of Employment Standards (Respondents) (Withdrawn)

0210-07-ES: Powco Steel Products Limited (Applicant) v. Victor Chatten and Director of Employment Standards (Respondents) (Withdrawn)

0211-07-ES: Powco Steel Products Limited (Applicant) v. Jason Post and Director of Employment Standards (Respondents) (Withdrawn)

0212-07-ES: Powco Steel Products Limited (Applicant) v. Troy Bush and Director of Employment Standards (Respondents) (Withdrawn)

0213-07-ES: Powco Steel Products Limited (Applicant) v. Mark Carlson and Director of Employment Standards (Respondents) (Withdrawn)

0329-07-ES: G4S Security Services (Canada) Ltd. (Applicant) v. Keith Nanoo and Director of Employment Standards (Respondents) (Endorsed Settlement)

0425-07-ES: 1144109 Ontario Ltd. (Applicant) v. Feng Zheng and Director of Employment Standards (Respondents) (Endorsed Settlement)

0470-07-ES: Precision Sheet Metal Inc. (Applicant) v. Lisa Goodfellow and Director of Employment Standards (Respondents) (Endorsed Settlement)

0531-07-ES: 2081699 Ontario Inc. Albert's Carpet One (Applicant) v. Tony Potter and Director of Employment Standards (Respondents) (Endorsed Settlement)

0584-07-ES: Glen J. Simmonds (Applicant) v. Metropolitan Toronto Condominium Corporation 1273 (M.T.C.C.) and Director of Employment Standards (Respondents) (Endorsed Settlement)

0634-07-ES: Franchie Pir, PIR Cosmetics (Applicant) v. Samantha Lau and Director of Employment Standards (Respondents) (Endorsed Settlement)

0646-07-ES: Elvia So (Applicant) v. Greek 2 Go, and Director of Employment Standards (Respondents) (Endorsed Settlement)

0655-07-ES: Agincourt Chrysler Plymouth Motors Inc. (Applicant) v. Mohammad Ali Ahmad and Director of Employment Standards (Respondents) (Endorsed Settlement)

0737-07-ES: Gianeff Excavating Contractors Limited (Applicant) v. Cid Marcos Modena and Director of Employment Standards (Respondents) (Dismissed)

0744-07-ES: Paul Dietz, a Director of Electronics Sales Professionals (Applicant) v. Eric Ebeltoft and Director of Employment Standards (Respondents) (Endorsed Settlement)

0751-07-ES: L & R Services (Applicant) v. Robert LeBrecque, Director of Employment Standards (Respondents) (Dismissed)

0766-07-ES: 2031113 Ontario Limited o/a Yorkdale Volkswagen (Applicant) v. Jean-Marie Hazarie and Director of Employment Standards (Respondents) (Endorsed Settlement)

0767-07-ES: David Sidney Moore, a Director of Metropolis Licensing Corp. (Applicant) v. Cezary Madras, Director of Employment Standards (Respondents) (Endorsed Settlement)

0821-07-ES: 853998 Ontario Inc. carrying on business as B & B Express (Applicant) v. Christopher Pola and Director of Employment Standards (Respondents) (Dismissed)

0826-07-ES: Flanagan Food Service Inc. (Applicant) v. Marc Desforges and Director of Employment Standards (Respondents) (Endorsed Settlement)

0866-07-ES: Daniel Park (Applicant) v. Eiko Properties, Director of Employment Standards (Respondents) (Endorsed Settlement)

0880-07-ES: Tristan Mills (Applicant) v. Estee Lauder Cosmetics Ltd. and Director of Employment Standards (Respondents) (Endorsed Settlement)

0887-07-ES: Hani Fathy Ismail (Applicant) v. The Egg and I and Director of Employment Standards (Respondents) (Withdrawn)

0912-07-ES: Hans Spiler (Applicant) v. Amigo Autobody Parts Ltd. and Director of Employment Standards (Respondents) (Endorsed Settlement)

0965-07-ES: 1693067 Ontario Inc. operating as Coffee Time Donuts (Applicant) v. Sharon Casiello and Director of Employment Standards (Respondents) (Endorsed Settlement)

1087-07-ES: Mrs. Urszula Rybarczyk (Applicant) v. Cadbury Adams Inc. cob as The Allan Candy Company Limited and Director of Employment Standards (Respondents) (Withdrawn)

1195-07-ES: Juan Martinez (Applicant) v. Rochester Aluminum Smelting Canada Limited Director of Employment Standards (Respondents) (Endorsed Settlement)

1242-07-ES: Adam Bathgate (Applicant) v. Lauer Machine & Manufacturing Limited and Director of Employment Standards (Respondents) (Endorsed Settlement)

1260-07-ES: Meerasa Yogaratnam (Applicant) v. Renaissance Shutters Inc. and Director of Employment Standards (Respondents) (Withdrawn)

1288-07-ES: St. Louis Bar and Grill (Applicant) v. Alyson Ella and Director of Employment Standards (Respondents) (Endorsed Settlement)

1289-07-ES: St. Louis Bar & Grill (Applicant) v. Cory Sutton and Director of Employment Standards (Respondents) (Endorsed Settlement)

1381-07-ES: Craig Lewis (Applicant) v. A+ Auto Centre and Director of Employment Standards (Respondents) (Endorsed Settlement)

1492-07-ES: Christopher Newman (Applicant) v. Cascades Canada Inc. (Cascades Enviropac - Toronto, Division of Cascades Canada Inc.) Director of Employment Standards (Respondents) (Withdrawn)

1502-07-ES: Stephen Sturgis (Applicant) v. Grand Enterprises and Director of Employment Standards (Respondents) (Terminated)

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

2719-05-HS: UNITE HERE (Applicant) v. Canadian Niagara Hotels Inc. and John Baca, Inspector (Respondents) (Withdrawn)

0665-07-HS: McKesson Canada (Applicant) v. Teamsters, Chemical, Energy and Allied Workers, Local Union 1979 and, Issa Muse, Inspector (Respondents) (Terminated)

1216-07-HS: Strada Crush Limited c.o.b. as Strada Crush Aggregate Processing (Applicant) v. Wayne Publicover, Stacy King and, P. Hannikainen, Inspector (Respondents) (Withdrawn)

1217-07-HS: Strada Crush Limited c.o.b. as Strada Crush Aggregate Processing (Applicant) v. Wayne Publicover, Stacy King and, P. Hannikainen, Inspector (Respondents) (Dismissed)

1278-07-HS: Torbridge Construction Ltd. (Applicant) v. Aggrey Emojong, Inspector (Respondent) (Withdrawn)

1328-07-HS: Ken Buchanan (Applicant) v. United Steelworkers, Local 665, Don Jewitt, Inspector (Respondents) (Withdrawn)

1329-07-HS: Ken Buchanan (Applicant) v. United Steelworkers, Local 665, Don Jewitt, Inspector (Respondents) (Granted)

1368-07-HS; 1369-07-HS; 1385-07-HS; 1386-07-HS: Ontario Secondary School Teachers' Federation (Applicant) v. Greater Essex County District School Board, and, Sophie Dennis, Inspector (Respondents); Elementary Teachers' Federation of Ontario (Applicant) v. Greater Essex County District School Board, and, Sophie Dennis, Inspector (Respondents) (Dismissed)

1373-07-HS: Toronto District School Board (Applicant) v. Elementary Teachers Federation of Ontario and R. Robert Sinson, Inspector (Respondents) (Granted)

1396-07-HS: RONA Building Center 663556 Ontario Ltd. (Applicant) v. Joseph Tarasco and Wayne Murphy, Inspector (Respondents) (Dismissed)

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

3159-06-PS: Ontario Nurses' Association (Applicant) v. Champlain Community Care Access Centre, Eastern Counties Community Care Access Centre, Ottawa Community Care Access Centre, Renfrew Community Care Access Centre, Lanark, Leeds and Grenville Community Care Access Centre, Canadian Union of Public Employees, Civic Institute of Professional Personnel, Ontario Public Service Employees Union (Respondents) v. COTA Health, Carefor Health and Community Services (Interveners) (Granted)

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

3833-05-U: John E. Mills (Applicant) v. Ontario Union of Stationary Engineers (Respondent) v. General Motors of Canada Limited, ACSYS Automotive Component Systems of Canada Inc. (Interveners) (Dismissed)

3862-05-R; 3864-05-R: Brick and Allied Craft Union of Canada and Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers (Applicant) v. Limen Masonry Limited and, Limen Group Ltd. and, Limen Masonry (2003) Inc. and, Limen Enterprises (2003) Inc. and, Acmar Masonry Inc. and, Acmar Group Ltd. and, Jomil Renovations Ltd. and, Milton Macedo and, Prestone Masonry Ltd. and, Jorge Gomes (Respondents) v. Masonry Industry Employers' Council of Ontario (Intervener); Labourers' International Union of North America, Local 837 (Applicant) v. Limen Masonry Limited and, Limen Group Ltd. and, Limen Masonry (2003) Inc. and, Limen Enterprises (2003) Inc. and, Acmar Masonry Inc. and, Acmar Group Ltd. and, Jomil Renovations Ltd. and , Milton Macedo and, Prestone Masonry Ltd. and, Jorge Gomes (Respondents) v. Ontario Masonry Contractors Association (Intervener) (Dismissed)

0073-06-R: John Mills (Applicant) v. General Motors of Canada Limited, Automotive Component Systems of Canada Inc. also known as ACSYS Technologies, Peregrine Oshawa Inc. (Respondents) v. Ontario Union of Stationary Engineers (Intervener) (Dismissed)

0353-06-ES: Oliver Bajor (Applicant) v. Arbitrage Research and Trading Ltd. and Director of Employment Standards (Respondents) (Dismissed)

1074-06-ES: Mary Ann Saleh (Applicant) v. Mr. Twister Inc. and Director of Employment Standards (Respondents) (Dismissed)

1572-06-ES: Dave Ritchie (Applicant) v. Thermo Coustics Ltd. and Director of Employment Standards (Respondents) (Dismissed)

2046-06-R; 2672-06-R: Labourers' International Union of North America, Local 625 (Applicant) v. Albamor Construction & Engineering Ltd. and, Arcas Construction Ltd. (Respondents) (Dismissed)

0015-07-U: Yvonne Headley (Applicant) v. Service Employees International Union Local 2.on Brewery, General and Professional Workers Union (Respondent) v. Participation House (Intervener) (Dismissed)

0932-07-R: The International Union of Painters and Allied Trades, Local Union 557 (Applicant) v. Golden Rock Painting Ltd. (Respondent) (Withdrawn)

PROJECT AGREEMENT APPLICATIONS (S.163.1(1))

1564-06-PR: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Union 128, Brick and Allied Craft Union of Canada, Local 23, United Brotherhood of Carpenters and Joiners of America, Local 1256, Operative Plasterers' and Cement Masons International Association of the United States and Canada Local 598, International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 700, Labourers' International Union of North America, Local 1089,

United Brotherhood of Carpenters and Joiners of America, Millwrights' Local 1592, International Union of Operating Engineers, Local 793, The Ontario Council of the International Brotherhood of Painters and Allied Trades Local Union 1590, Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union 124, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 663, Refrigeration Workers Local Union 787, Rodmen (International Association of Bridge, Structural and Ornamental Ironworkers Local Union 700), Roofers (Sheet Metal Workers International Association Local 539) , Sheet Metal Workers International Association, Local 539, Sprinkler Pipefitter Ontario Pipe Trades Council Local 853, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Local Union 880, Marble Tile and Terrazzo Workers Brick and Allied Craft Union of Canada Local Union 23, Sarnia Construction Association as agent for Basell Canada Inc. (Respondents) (Terminated)

MISCELLANEOUS

1525-07-M: Klodiana Isai (Applicant) v. Cara Operation Limited (Respondent) (Dismissed)

CASE LISTINGS SEPTEMBER 2007

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 2007

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

0013-07-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Kralik Electrical Services Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Kralik Electrical Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Kralik Electrical Services Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0560-07-R; 0561-07-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Heath Services Ltd. (Respondent); United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 663 (Applicant) v. Heath Services Ltd. (Respondent)

Unit: "all boilermakers and boilermakers apprentices in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all boilermakers and boilermakers apprentices in the employ of the responding party in all other sectors of the construction industry in the County of Lambton excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

1330-07-R: International Union of Operating Engineers, Local 793 (Applicant) v. Silver Concrete Pumping Limited (Respondent) v. Ian Fierheller (Intervener)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Silver Concrete Pumping Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Silver Concrete Pumping Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1720-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Avery Construction Ltd. (Respondent)

Unit: "all construction labourers in the employ of the responding party in the District of Thunder Bay, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1736-07-R: International Brotherhood Of Electrical Workers, Local 120 (Applicant) v. Finan Electric Ltd. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Finan Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Finan Electric Ltd., in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (6 employees in unit)

1744-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Smartstage Canada Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Smartstage Canada Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Smartstage Canada Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman all carpenters and carpenters' apprentices in the employ of Smartstage Canada Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

1752-07-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Torget Contracting Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Torget Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Torget Contracting Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1759-07-R: Labourers' International Union of North America, Local 625 (Applicant) v. Pro-Bid Contractors Limited (Respondent)

Unit: "all construction labourers in the employ of Pro-Bid Contractors Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Pro-Bid Contractors Limited in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

1804-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Brant-Ville Construction Ltd. (Respondent)

Unit: "carpenters and carpenters' apprentices in the employ of Brant-Ville Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of Brant-Ville Construction Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that

portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

1807-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Selba Industries Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Selba Industries Inc. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (26 employees in unit)

1814-07-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Looby Mechanical Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Looby Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Looby Mechanical Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka; the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

1841-07-R: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 2041, (Applicant) v. Technique Acoustique (L.R.) Inc. (Respondent) v. Canadian Construction Workers of Canada (Intervener)

Unit: "all carpenters and carpenters' apprentices in the employ of Technique Acoustique (L.R.) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters apprentices' in the employ of Technique Acoustique (L.R.) Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1846-07-R: Labourers' International Union of North America, Local 527 (Applicant) v. 697723 Ontario Inc. o/a FENCE DEPOT (Respondent)

Unit: "all construction labourers in the employ of 697723 Ontario Inc. o/a FENCE DEPOT in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of 697723 Ontario Inc. o/a FENCE DEPOT in all sectors of the construction industry in the United Counties of Stormont, Dundas and Glengarry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

1862-07-R: Christian Labour Association of Canada (Applicant) v. Optimum Mechanical Solutions Inc. (Respondent)

Unit: "all journeymen and apprentice sheet metal workers in the employ of Optimum Mechanical Solutions Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1894-07-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Advanced Precast Inc. (Respondent)

Unit: "all employees in the employ of Advanced Precast Inc. engaged in the erection and finishing of precast concrete products in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all employees in the employ of Advanced Precast Inc. engaged in the erection and finishing of precast concrete products in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1916-07-R: Canadian Construction Workers' Union (Applicant) v. WSFT Development Inc. (Respondent)

Unit: "all construction labourers in the employ of WSFT Development Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3443-03-R; 3449-03-R: Canadian Union of Skilled Workers (Applicant) v. Ontario Power Generation Inc. (Respondent) v. Power Workers' Union Canadian Union of Public Employees, C.L.C. Local 1000 (Intervener); Canadian Union of Skilled Workers (Applicant) v. Bruce Power LP (Respondent) v. Power Workers' Union Canadian Union of Public Employees, C.L.C. Local 1000 (Intervener)

Unit: "1. The employer recognizes the Union as the exclusive bargaining agency for a bargaining unit made up of OPGI employees whose classifications are defined in paragraph 4 engaged in all construction industry work on the Employer's Property in the Province of Ontario. 2. This work shall be performed in the Province of Ontario on OPGI property for generating facilities. This work includes the building of generating stations, hydraulic works, heavy water facilities, microwave and repeater stations and Miscellaneous Hydraulic Projects but excludes the building of commercial-type office facilities at urban locations remote from operating facilities. 3. The work encompasses: (a) Construction of new facilities (b) Additions to existing facilities (c) Modifications (d) Rehabilitation (e) Reconstruction of existing facilities 4. The bargaining unit under this Agreement shall comprise the following classifications: Electrician Journeyman including Foreman and Subforeman Electrician Welder Electrician Apprentice Communications Electrician 5. If additional classifications are required, they will be negotiated as appropriate for electrical construction work in the electrical power systems sector. 6. The term "employee" shall include all employees of the Employer in the classifications as set out in paragraph 4 above." (146 employees in unit)

Number of names of persons on revised voters' list	143
Number of persons who cast ballots	133
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	133
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	133
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

2790-06-R: Ontario Public Service Employees Union (Applicant) v. Community Living Campbellford/Brighton (Respondent)

Unit: "all employees of Community Living Campbellford/Brighton in Northumberland County, save and except supervisors, persons above the rank of supervisor, Accounts Payable/Payroll Clerk, HR/Executive Assistant and Administrative Assistant" (60 employees in unit)

Number of names of persons on revised voters' list	61
Number of persons who cast ballots	56
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	50
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	6

0385-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Aecon Industrial, A Division of Aecon Construction Group Inc. (Respondent) v. Labourers' International Union of North America (Intervener)

Unit: "all employees and foremen of Aecon Industrial, A Division of Aecon Construction Group Inc. as defined below engaged in all construction industry work* performed in the electrical power systems sector in the Province of Ontario on Ontario Power Generation Inc. (OPGI), Hydro One and Bruce Power LP property for the bulk power system, save and except the building of commercial-type office facilities at urban locations remote from operating facilities. * the work performed is deemed to be under the responsibility of the Engineering and Construction Services Branch. The work encompasses: - construction of new facilities - additions to existing facilities - major - modifications - rehabilitation - reconstruction of existing facilities For the purpose of clarity, the bulk power system comprises generating stations, hydraulic works, heavy water facilities, transmission lines (voltages over 50kV), transmission stations, microwave and repeater stations. The work described above shall also include work on property acquired by Ontario Power Generation Inc. (OPGI), Hydro One and Bruce Power LP for: (a) the supply of aggregate and concrete used in the construction of said facilities; and (b) ancillary material yards which are defined as property acquired by Ontario Power Generation Inc. (OPGI), Hydro One and Bruce Power LP for the storage of materials to be used on a project by Employers. The term "employee" shall include all employees of the Responding Party in the classifications set out below: Group I Watchman Group II Labourer Heaterman Power Sweeper Operator Siamese Blowgun Operator Carpenter Helper Flagman Signalman Spotter Janitorial Cleaner (Construction Site) Area Captain (BHWP) Group III Formworker (Lakeview and Pickering Projects only) Group IV Conveyor Belt Attendant Scaler Wrecker - Demolition of Complete Buildings Yardman – Used Building Materials Form Stripper Powderman Helper Air Trac Driller Helper Bricklayer Helper/Mason Tender Stressing Operating Helper - Post-Tensioning and Prestressing Caulker including Tile and Concrete Pipe Grouter Operator (not machine) Portable Compressor Operator Small Pump Operator Pipe Layer Small Mixer Operator Group V Concrete Worker Floatman Puddler Screedman Mortarman Group VI Air Tool Operator Concrete Core Drill Machine Operator Jackhammer Operator Tamper Operator Chainsaw Operator Vibrator Operator Electrical Tool Operator Pressurized Grouterman Bomag Operator Scootcrete Operator Chipping Hammer Operator Concrete Breaker Jackleg Operator Rocksplitter Operator Farm Tractor Operator Tool Crib Attendant Building Labourer (Lines and Stations only) Stump Cutter Operator Stress Operator Post-Tensioning and Prestressing Welder - Post-Tensioning and Prestressing Group VII Powderman Group VIII Air Trac/Hydraulic Drills and Self-Propelled Hydraulic Drills Group IX Diamond Driller The term "employee" shall not include Labourers employed by an Employer signatory to the National Agreement for Canada, Stacks-Chimneys-Silos, when performing work covered by the scope of that agreement. The term "foreman" shall include all foremen between the ranks of, but not including, working foreman and general foreman, save and except those described hereunder. Labourer foremen employed by an Employer signatory to the National Agreement for Canada,

Stacks-Chimneys-Silos, when performing work covered by the scope of that agreement." (40 employees in unit) *(Clarity Note)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	38
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	30
Number of ballots marked in favour of applicant	15
Number of ballots marked in favour of intervener	1
Number of ballots segregated and not counted	0

0814-07-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Coldstream Concrete Limited (Respondent)

Unit: "all employees of Coldstream Concrete Limited in the County of Middlesex, save and except supervisors, persons above the rank of supervisor, office, clerical, administrative, sales and engineering staff" (36 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	42
Number of persons who cast ballots	46
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	13
Number of names of persons on revised voters' list	33
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	0

0858-07-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Capital Tool & Design Limited (Respondent)

Unit: "all employees of Capitol Tool & Design Limited in the City of Vaughan, save and except supervisors and persons above the rank of supervisor, office, clerical and sales staff" (240 employees in unit)

Number of names of persons on revised voters' list	315
Number of persons who cast ballots	299

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	246
Number of segregated ballots cast by persons whose names appear on voter's list	50
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	123
Number of ballots marked against applicant	121
Number of ballots segregated and not counted	53

0958-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Greenwin Property Management Inc. (Respondent)

Unit: "all employees of Greenwin Property Management Inc. engaged in cleaning and maintenance services employed at 516, 520, 530, 540, 546, 552, 559 The West Mall and 607, 609, 611, 613, 615, 617, 635 The East Mall and 445 Rathburn Road, all in the City of Toronto, Province of Ontario, including Resident Superintendents, save and except Property and Maintenance Managers, persons above the rank of Property and Maintenance Managers, office and clerical staff" (3 employees in unit) *(Having regard to the agreement of the parties)*

Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1235-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Pamata Hospitality Inc. c.o.b. Howard Johnson Hotel (Respondent)

Unit: "all Front Desk, Housekeeping, Cleaning, Maintenance and Night Audit employees of Pamata Hospitality Inc. c.o.b. HOWARD JOHNSON HOTEL, working at 1333 Weber Street East, in the City of Kitchener, Ontario, save and except Managers, persons above the rank of Manager, Office, Clerical and Sales Staff" (19 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	3

1422-07-R: United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. Toro Aluminum (Respondent)

Unit: "all employees of Toro Aluminum in the City of Vaughn, save and except supervisors, those above the rank of supervisor, office, clerical, accounting and sales, service and installers" (185 employees in unit)

Number of names of persons on revised voters' list	231
Number of persons who cast ballots	223
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	179
Number of segregated ballots cast by persons whose names appear on voter's list	38
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	83
Number of ballots marked against applicant	97
Number of ballots segregated and not counted	44

1617-07-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Tinnerman Palnut Engineered Products (Canada) Corp. (Respondent)

Unit: "all employees of Tinnerman Palnut Engineered Products (Canada) Corp. in the City of Hamilton, save and except supervisors, persons above the rank of supervisor, office, clerical, technical and sales staff" (150 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	174
Number of persons who cast ballots	172
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	143
Number of segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names do not appear on voters' list	8
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	74
Number of ballots marked against applicant	68
Number of ballots segregated and not counted	29

1633-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Nexcycle Plastics Inc. (Respondent)

Unit: "all employees of Nexcycle Plastics Inc. located at 235 Wilkenson Road in Brampton, Ontario, save and except those persons above the rank of supervisor, shunt drivers, drivers, sales, office and clerical staff and students" (56 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	56
Number of persons who cast ballots	51
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	50
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	32
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	1

1640-07-R: Canadian Union of Public Employees (Applicant) v. Harrow Day Care Inc. (Respondent)

Unit: "all employees of Harrow Day Care Inc. in the County of Essex, save and except the Administrative Assistant, supervisors and persons above the rank of supervisor" (11 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

1643-07-R: Ontario Public Service Employees Union (Applicant) v. Elmira and District Association for Community Living (Respondent)

Unit: "all employees of the Elmira and District Association for Community Living in the Regional Municipality of Waterloo, save and except Supervisors and persons above the rank of Supervisor, Human Resources Assistant and Administrative Assistant to the Executive Director" (143 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	138
Number of persons who cast ballots	100
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	98
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	79
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	2

1718-07-R: The Ontario Nurses' Association (Applicant) v. Adult Mental Health Services of Haldimand-Norfolk (Respondent)

Unit: "all registered nurses and social workers employed by Adult Mental Health Services of Haldimand-Norfolk working in the Adult Program, Specialized Geriatric Program, and the Crisis Assessment and Support Team in Norfolk County and Haldimand County, save and except managers, persons above the rank of manager, office and clerical staff, and persons covered by a subsisting collective agreement" (17 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0

Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1773-07-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Canon Canada Inc., Business Solutions Division (Respondent)

Unit: "all employees of Canon Canada Inc., Business Solutions Division in the City of Burlington, save and except managers, and persons above the rank of manager, office, clerical and sales staff" (30 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	0

1774-07-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Oldcastle Building Products Canada Inc. (Respondent)

Unit: "all employees of Oldcastle Building Products Canada Inc. in the Town of Caledon, save and except supervisors and persons above the rank of supervisor, office, clerical and sales staff" (22 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

1785-07-R: Sheet Metal Worker's International Association Local 540 (Applicant) v. Aaon Canada Inc 279 Sumach Dr Burlington, ON L7R 3X5 (Respondent)

Unit: "all employees of AAON Canada Inc. in the City of Burlington, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (83 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	88
Number of persons who cast ballots	77
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	77
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	53
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	0

1786-07-R: The Canadian Union of Public Employees (Applicant) v. Cochrane Public Library (Respondent)

Unit: "all employees of the Cochrane Public Library in the Town of Cochrane, save and except chief executive officer, and persons above the rank of chief executive officer" (5 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1787-07-R: Service Employees International Union Local 1.on (Applicant) v. Toronto East General Hospital (Respondent)

Unit: "all dieticians employed by Toronto East General Hospital in the City of Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff, employees in bargaining units for whom any trade union held bargaining rights as of August 29, 2007, and students employed during the school vacation period" (10 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

1822-07-R: Canadian Union of Public Employees (Applicant) v. Kids and Company (Respondent)

Unit: "all employees of Kids and Company in the Town of Ajax, save and except director and persons above the rank of director" (10 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1868-07-R: Service Employees International Union Local 2.on, Brewery, General and Professional Workers' Union (Applicant) v. Hurley Corporation (Respondent)

Unit: "all employees of Hurley Corporation engaged in cleaning at 8200 Warden Avenue in the City of Markham, save and except supervisors and persons above the rank of supervisor" (22 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	1

1886-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Dakkota Integrated Systems LLC (Respondent)

Unit: "all employees of Dakkota Integrated Systems LLC in the Town of Lakeshore, save and except supervisors, those above the rank of supervisor, office, clerical, administrative employees, security guards and sales staff" (127 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	139
Number of persons who cast ballots	134
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	127
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	123
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	7

1887-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. HBPO Canada Inc. (Respondent)

Unit: "all employees of HBPO Canada Inc. in the City of Windsor, save and except supervisors, those above the rank of supervisor, office, clerical, administrative employees, security guards and sales staff" (121 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	121
Number of persons who cast ballots	106
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	106
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	105
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

1896-07-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Dollar Thrifty Automotive Group Canada Inc. (Respondent)

Unit: "all employees of Dollar Thrifty Automotive Group Canada Inc., at Pearson International Airport Terminal 3, in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, mechanics and assistant mechanics, office, clerical and sales staff, casual employees, temporary agency employees, students employed during school vacation periods, and persons employed in any other bargaining units" (15 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

Applications for Certification Dismissed Without Vote

1572-05-R: Labourers' International Union of North America, Local 1089 (Applicant) v. Sarnia Paving Stone Limited (Respondent)

Applications for Certification Dismissed Subsequent to Vote

3112-03-R: Central Ontario Regional Council of Carpenters, Drywall and Allied Workers United Brotherhood of Carpenters and Joiners of America (Applicant) v. Garritano Bros. Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Garritano Bros. Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of Garritano Bros. Ltd. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, the Regional Municipality of Durham (except for the Towns of Ajax and

Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

0234-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rockwell Contracting Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Rockwell Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of Rockwell Contracting Ltd. in all other sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

0375-07-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. First View Properties Inc. (Respondent) v. Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all construction employees employed by First View Properties Inc. in the Province of Ontario in all sectors of the construction industry, other than the ICI sector, save and except non-working foremen and persons above the rank of non-working foreman" (17 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	15

Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	1
Number of ballots segregated and not counted	1

1603-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Value Village Stores Inc. (Respondent)

Unit: "all employees of Value Village Stores. Inc in the Town of Whitby, save and except supervisors and persons above the rank of supervisor" (27 employees in unit)

Number of names of persons on revised voters' list	52
Number of persons who cast ballots	51
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	36
Number of ballots segregated and not counted	0

1668-07-R: National Automobile, Aerospace, Transportation, and General Workers Union of Canada (CAW Canada) (Applicant) v. CEVA Logistics Canada ULC (Respondent)

Unit: "all administrative employees (office clerks) at CEVA Logistics in the City of London, Ontario, save and except persons above the rank of supervisors" (31 employees in unit)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	26
Number of ballots segregated and not counted	0

1721-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. FRT Hospitality Inc. c.o.b Montana's Cookhouse (Respondent)

Unit: "all full-time and part-time employees of FRT Hospitality Inc. c.o.b. Montana's Cookhouse in the City of Niagara Falls, Ontario, save and except Supervisors, Assistant Supervisors and those above the rank of Supervisors" (45 employees in unit)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	29

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	2

1740-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Parts Canada Development Co. (Respondent)

Unit: "all employees of the responding party in the City of London, save and except office staff and sales people, supervisors and those above the rank of supervisor" (41 employees in unit)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	0

1771-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Hewitt Material Handling Inc. (Respondent)

Unit: "all employees of Hewitt Material Handling Inc. in the Town of Stoney Creek, in the City of Hamilton, save and except supervisors, forepersons, those above the rank of forepersons, office and sales staff" (12 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	1

1772-07-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Hewitt Material Handling Inc. (Respondent)

Unit: "all employees of Hewitt Material Handling Inc. in the City of Kitchener, save and except supervisors, forepersons, those above the rank of forepersons, office and sales staff" (15 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	1

1813-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Tri-County Mennonite Homes c.o.b. as Nithview Home (Respondent)

Unit: "all employees of Tri-County Mennonite Homes c.o.b. as Nithview Home, at 200 Boullee St., in the Town of New Hamburg, Ontario, save and except Registered Nurses, Graduate Nurses, Office Staff, Maintenance, Volunteers, Supervisors, and those above the rank of Supervisor" (133 employees in unit)

Number of names of persons on revised voters' list	129
Number of persons who cast ballots	112
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	111
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	46
Number of ballots marked against applicant	64
Number of ballots segregated and not counted	1

Applications for Certification Withdrawn

0905-06-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Select Overhead Door Service Inc. (Respondent)

2647-06-R: Canadian Union of Public Employees (Applicant) v. York University (Respondent) v. York University Staff Association (Intervener) *(Having regard to the agreement of the parties.)*

3415-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Weiscor Construction Ltd. (Respondent)

0020-07-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1653751 Ontario Inc. o/a Due North Drywall (Respondent)

1681-07-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Birchland Plywood - Veneer Limited (Respondent)

1716-07-R: Teamsters Local Union No. 879 (Applicant) v. Bonduelle (formerly Carriere Foods (Ontario) Inc. (Respondent)

1950-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Pratt & Whitney Canada Inc. (Respondent)

2009-07-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-CANADA) (Applicant) v. Dana Canada Corporation (Respondent) v. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (Intervener)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1266-06-R: United Food & Commercial Workers Canada, Local 175 (Applicant) v. Belaire Hotel and Ceno Inc. (Respondents) *(Terminated)*

1588-06-R: Communications, Energy and Paperworkers Union of Canada and its Local 2003 (Applicant) v. MPI Packaging Inc., 1343092 Ontario Ltd. (formerly Aquapac Industries Inc.), Pet-Pak Containers (A Division of Amcor Pet Americas Inc.), 95467 Ontario Ltd. c.o.b. Pet-Pak Containers (Respondents) *(Withdrawn)*

1932-06-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Richards-Wilcox Door Systems Limited/Select Overhead Door Service Inc. and, Richards-Wilcox Door Systems (Toronto) Limited/412552 Ontario Ltd. (Respondents) v. Richards-Wilcox Custom Systems Inc. (Intervener) *(Withdrawn)*

4056-06-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. D.C. Carpentry, Cast Construction and, Carica Construction Inc. (Respondents) *(Granted)*

4075-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bramcor Group (Ontario) Ltd., Bramcor Group Inc., The Fence People Limited (Respondents) *(Withdrawn)*

1391-07-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Island Wide Electrical Services Inc. and Fairhill Electric Ltd. (Respondents) *(Granted)*

1519-07-R: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Latonia Forming Ltd., D.M.S. Concrete Forming Inc. and CAP Concrete Structures Ltd. (Respondents) *(Endorsed Settlement)*

SALE OF A BUSINESS

1266-06-R: United Food & Commercial Workers Canada, Local 175 (Applicant) v. Belaire Hotel and Ceno Inc. (Respondents) *(Terminated)*

1588-06-R: Communications, Energy and Paperworkers Union of Canada and its Local 2003 (Applicant) v. MPI Packaging Inc., 1343092 Ontario Ltd. (formerly Aquapac Industries Inc.), Pet-Pak Containers (A Division of Amcor Pet Americas Inc.), 95467 Ontario Ltd. c.o.b. Pet-Pak Containers (Respondents) *(Withdrawn)*

1932-06-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Richards-Wilcox Door Systems Limited/Select Overhead Door Service Inc. and, Richards-Wilcox Door Systems (Toronto) Limited/412552 Ontario Ltd. (Respondents) v. Richards-Wilcox Custom Systems Inc. (Intervener) *(Withdrawn)*

4056-06-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. D.C. Carpentry, Cast Construction and, Carica Construction Inc. (Respondents) *(Granted)*

4075-06-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bramcor Group (Ontario) Ltd., Bramcor Group Inc., The Fence People Limited (Respondents) *(Withdrawn)*

1039-07-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. T.F. Steel Placing Inc. and, T & F Construction Ltd. (Respondents) *(Granted)*

1391-07-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Island Wide Electrical Services Inc. and Fairhill Electric Ltd. (Respondents) *(Granted)*

1519-07-R: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Latonia Forming Ltd., D.M.S. Concrete Forming Inc. and CAP Concrete Structures Ltd. (Respondents) *(Endorsed Settlement)*

1717-07-R: L'Office des télécommunications éducatives de langue française de l'Ontario (OTÉLFO) (Applicant) v. Guilde canadienne des médias (GCM) (Respondent) *(Granted)*

1719-07-R: L'Office des télécommunications éducatives de langue française de l'Ontario (OTÉLFO) (Applicant) v. Syndicat canadien des communications, de l'énergie et du papier, Local 72-M (SCEP) (Respondent) *(Granted)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3630-06-R: Robert White (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Respondent) v. Blue Line Plumbing & Heating Ltd. (Intervener) *(Withdrawn)*

Unit: "all plumbers and plumbers' apprentices and all pipe fitters and pipe fitters apprentices in the employ of Blue Line Plumbing & Heating Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry save and except the industrial, commercial and institutional sector, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in unit)

0331-07-R: Randy Sutton (Applicant) v. Central Ontario Regional Council of Carpenters Drywall and Allied Workers, United Brotherhood of Carpenters and Joiners of America (Respondent) v. First View Properties Inc. (Intervener) *(Granted)*

Unit: "all construction employees employed by First View Properties Inc. in the Province of Ontario in all sectors of the construction industry, other than the ICI sector, save and except non-working foremen and persons above the rank of non-working foreman" (15 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots segregated and not counted	1

1833-07-R: David Gibson (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Respondent) v. 1441722 Ontario Inc. c.o.b. as Protech Plumbing & Mechanical (Intervener) *(Dismissed)*

1952-07-R: The Employees of 920805 Ontario Limited operating as Northcrest Lanes (Applicant) v. Northern Ontario Joint Council of the Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union, A.F.L.-C.I.O.-C.L.C. (Respondent) *(Dismissed)*

APPLICATION UNDER THE AMBULANCE SERVICES COLLECTIVE BARGAINING ACT

1724-07-M: Peel Regional Paramedic Services of the Regional Municipality of Peel (Applicant) v. Ontario Public Service Employees Union, Local 277 (Respondent) *(Granted)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

0800-02-U: William Tenniscoe (Applicant) v. The Canadian Union of Public Employees, Local 87 (Respondent) v. Corporation of the City of Thunder Bay (Intervener) *(Dismissed)*

3897-03-U: Central Ontario Regional Council of Carpenters, Drywall and Allied Workers United Brotherhood of Carpenters and Joiners of America (Applicant) v. Garritano Bros. Ltd. (Respondent) *(Withdrawn)*

1987-04-U: Luke Panovski (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Dismissed)*

1373-05-U: Labourers' International Union of North America, Local 625 (Applicant) v. Greater Windsor Home Builders Association Inc. (Respondent) *(Withdrawn)*

1408-05-U: Labourers' International Union of North America, Local 625 (Applicant) v. Enrico Naclerio Construction and, Enrico Naclerio (Respondents) *(Withdrawn)*

2087-05-U: Jeffrey L. Peers (Applicant) v. Universal Workers Union Local 183 Jorge Vala (Respondent) v. Delta Contractors (Intervener) *(Dismissed)*

2550-05-U; 3526-05-U: Canadian Niagara Hotels Inc. (Applicant) v. UNITE HERE Local 75 (Respondent) *(Terminated)*

2784-05-U: Mews Chevrolet Limited (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent) *(Withdrawn)*

4247-05-U: Service Employees International Union Local 1.on (Applicant) v. Humber River Regional Hospital (Respondent) *(Withdrawn)*

0447-06-U: Michel E. Auclair (Applicant) v. La Fédération des enseignantes et des enseignants des écoles secondaires de l'Ontario, 25e District (Respondent) *(Dismissed)*

2486-06-U: Mike Costa (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Central Ontario Regional Council and its Local 1072 (Respondent) v. Universal Showcase Ltd., idX Corporation (Intervener) *(Withdrawn)*

2568-06-U: Esther I. Bissoon (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) v. Toronto District School Board (Intervener) *(Dismissed)*

3338-06-U: Ken Lamoureux (Applicant) v. The United Food and Commercial Workers Union Local 12R24 (Respondent) v. Brewers Retail Inc. operating as The Beer Store (Intervener) *(Dismissed)*

3359-06-U: Leonard C. Brooks (Applicant) v. PVS Contractors (Respondent) *(Withdrawn)*

3456-06-U: Ontario Public Service Employees Union (Applicant) v. York Region Children's Aid Society (Respondent) *(Withdrawn)*

3484-06-U: Dorrel Richards (Applicant) v. Ontario Public Service Employees Union, Local 571 (Respondent) v. University Health Network (Intervener) *(Dismissed)*

3576-06-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Michel Portugaise o/a All-Teck Electric (Respondent) *(Withdrawn)*

0014-07-U: Rod Smith et al (Applicant) v. Teamsters Local Union 938 (Respondent) *(Withdrawn)*

0346-07-U: International Association of Bridge, Structural Ornamental and Reinforcing Ironworkers, Local 700 (Applicant) v. Essex-Windsor Solid Waste Authority, A.A. Boscariol & Associates Limited, Rob Piroli Construction Inc., Glen White Contractors Ltd. c.o.b. as Steelway Building Systems and, Vertec Contractors Ltd. c.o.b. as Steelway Building Systems (Respondents) *(Withdrawn)*

0443-07-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. The Rockport Group, Rockport Group Developments Inc., Rockport Holdings Limited, Rockport Homes Limited, Studio Court Limited, Rockport Construction Services Inc., Indico Holdings Limited (Respondents) *(Withdrawn)*

0578-07-U: Abdisalan Amir Ali (Applicant) v. United Food & Commercial Workers Canada Locals 175 & 633 (Respondent) v. National Car Rental (Canada) Inc. (Intervener) *(Dismissed)*

0644-07-U: Tony Douglas (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 555 (Respondent) v. Parmalat Dairy & Bakery Inc. (Intervener) *(Dismissed)*

0798-07-U; 1660-07-U: United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Applicant) v. Toro Aluminum (Respondent) *(Withdrawn)*

0841-07-U: William Scott MacTavish (Applicant) v. International Brotherhood of Electrical Workers, Local 636 (Respondent) *(Withdrawn)*

0847-07-U: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 663, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicants) v. Heath Services Ltd. (Respondent) *(Withdrawn)*

0881-07-U: Labourers' International Union of North America, Local 1059 and Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Looby Construction Limited; L.J. Looby Contracting Ltd.; Looby Builders (Dublin) Ltd.; Joe Looby and Stan Connelly (Respondent) *(Terminated)*

1008-07-U: Grace Yeboah (Applicant) v. United Steelworkers (Respondent) *(Dismissed)*

1016-07-U: Lena Reeves (Applicant) v. CUPE Local 79 (Respondent) v. City of Toronto (Intervener) *(Withdrawn)*

1019-07-U: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America and Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council, Labourers' International Union of North America, Local 506, SNC-Lavalin Power Ontario Inc., 1409096 Ontario Limited c.o.b. as Peri Scaffolding and, Aluma Systems Canada Inc. (Respondents) *(Withdrawn)*

1037-07-U: Miguel R. Quesnel (Applicant) v. L'Association des enseignantes et des enseignants franco-ontariens (Respondent) v. Le Conseil scolaire de district du Centre-Sud-Ouest (Intervener) *(Dismissed)*

1174-07-U: Service Employees International Union Local 2.on, Brewery, General & Professional Workers' Union (Applicant) v. UNICCO Facility Services Canada Company (Respondent) *(Withdrawn)*

1199-07-U: Mary Gardner (Applicant) v. The Ontario Secondary School Teachers' Federation (Respondent) *(Dismissed)*

1205-07-U: Michelle Fry (Applicant) v. International Association of Machinists and Aerospace Workers Local Lodge No. 1863 (Respondent) v. Volvo Road Machinery Ltd. (Intervener) *(Withdrawn)*

1225-07-U: Marcus Van Word (Applicant) v. Canadian Union of Public Employees, Local 4400 (Respondent) v. Toronto District School Board (Intervener) *(Dismissed)*

1267-07-U; 1268-07-U: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sheet Metal Workers' International Association, Local 51, Mike Abaza Proaction Aluminum Inc., Eastern Eavestroughing Ltd., Jackson Roofing GTA Inc., 413554 Ontario Limited c.o.b. Chouinard Bros. Roofing, Burnhamthorpe Roofing Company Limited, Donia Aluminum & Roofing Limited, Colombus Aluminum and Roofing Ltd., Trudel & Sons Roofing Ltd., E.P. Siding Inc., Expert Eavestroughing, Chouinard Bros. Aluminum Ltd., Giancola Aluminum Contractors Ltd., GM Exteriors Inc., Aspen Aluminum Ltd., Goreski Roofing and Lathing Ltd., GTA Aluminum Inc., CRO Aluminum Inc. (Respondents); Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sheet Metal Workers' International Association, Local 51, Ken Morin, Tops Roofing Ltd., Eastern Eavestroughing Ltd., Jackson Roofing GTA Inc., 413554 Ontario Limited c.o.b. Chouinard Bros. Roofing, Burnhamthorpe Roofing Co. Ltd. (1994), Donia Aluminum & Roofing Limited, Colombus Aluminum and Roofing Ltd., Trudel & Sons Roofing Ltd., E.P. Siding Inc., Expert Eavestroughing, Chouinard Bros. Aluminum, Giancola Aluminum Contractors Ltd. and/or Giancola Aluminum Contractors Inc., GM Exteriors Inc., Aspen Aluminum Ltd., Goreski Roofing and Lathing Ltd., GTA Aluminum Inc., CRO Aluminum Inc. (Respondents) *(Dismissed)*

1512-07-U: Dudley Wright (Applicant) v. Local 873 of International Alliance of Theatrical Stage Employees (Respondent) *(Dismissed)*

1569-07-U: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Formula Ford Lincoln Sales Limited (Respondent) *(Withdrawn)*

1686-07-U: Garnet William Robinson (Applicant) v. International Association of Bridge, Structural and Ornamental Iron Workers - Local Union No. 700 (Respondent) *(Withdrawn)*

1743-07-U: Ontario Public Service Employees Union (Applicant) v. Community Living North Perth (Respondent) *(Withdrawn)*

1746-07-U: Labourers' International Union of North America, Local 506 (Applicant) v. Seron Construction Limited (Respondent) *(Withdrawn)*

1757-07-U: Ontario Public Service Employees Union (Applicant) v. York Region Children's Aid Society (Respondent) *(Withdrawn)*

1795-07-U: Teamsters Local Union No. 879 (Applicant) v. Bonduelle (formerly Carriere Foods (Ontario) Inc. (Respondent) *(Withdrawn)*

1835-07-U: Lenford Adlam (Applicant) v. CUPE, Local 1263 (Respondent) *(Terminated)*

1857-07-U: Barrie Owen Parker (Applicant) v. CAW-TCA Local 1837 Bosal Unit (Respondent) *(Withdrawn)*

1939-07-U: Service Employees International Union Local 2.on, Brewery, General & Professional Workers' Union (Applicant) v. Hurley Corporation (Respondent) *(Withdrawn)*

1972-07-U: Amalgamated Transit Union, Local 685 (Applicant) v. Operation Lift (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

1971-07-M: Amalgamated Transit Union, Local 685 (Applicant) v. Operation Lift (Respondent) *(Withdrawn)*

APPLICATIONS FOR CONSENT TO PROSECUTE

1969-07-U: 697723 Ontario Inc. o/a Fence Depot (Applicant) v. Labourers' International Union of North America, Local 527, Murray Ostrom and, Duncan McDonell (Respondents) *(Dismissed)*

JURISDICTIONAL DISPUTES

3113-05-JD: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Smith Brothers Contracting Corp., Electrical Power Systems Construction Association, United Brotherhood of Carpenters and Joiners of North America Local 1946 (Respondents) *(Granted)*

1269-06-JD: Labourers' International Union of North America and Construction Allied Workers, Local Union 607 (Applicant) v. Aluma Systems Canada Inc. and, Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers Local 1669 (Respondents) v. Ontario Power Generation Inc. (Intervener) *(Dismissed)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

2193-04-M: Ontario Public Service Employees Union (Applicant) v. St. Lawrence College (Respondent) *(Dismissed)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

3852-05-OH: Canadian Union of Public Employees and it's Local 2 (Applicant) v. Toronto Transit Commission (Respondent) *(Withdrawn)*

2858-06-OH: James Robert (Bob) Hyde (Applicant) v. London Transit Commission (Respondent) v. Amalgamated Transit Union, Local 741 (Intervener) *(Withdrawn)*

3345-06-OH: Heath Ian Currie (Applicant) v. Spartech Color Stratford (Respondent) *(Terminated)*

0033-07-OH: Bill Gamble (Applicant) v. Raymond Industrial Equipment (Respondent) *(Terminated)*

0278-07-OH: George Yuen (Applicant) v. Intier Automotive (M.S.S.) Inc. (Respondent) *(Dismissed)*

0643-07-OH: United Food & Commercial Workers Canada Local 175 (Applicant) v. Firestone Textiles Company a Division of Bridgestone/Firestone Canada Inc. (Respondent) *(Withdrawn)*

0712-07-OH: Christopher Chester Davis (Applicant) v. R.B. Bell Supplies Ltd. (Respondent) *(Dismissed)*

0843-07-OH: Nelson Wong (Applicant) v. Formula Honda (Respondent) *(Dismissed)* 1154-07-OH: Brian Hart (Applicant) v. Mevotech Inc. (Respondent) *(Withdrawn)*

1321-07-OH: Reg McMahon (Applicant) v. The Beer Store (Respondent) *(Withdrawn)*

1415-07-OH: Andre T. Wareham (Applicant) v. Mevotech Inc. (Respondent) *(Withdrawn)*

1741-07-OH: Anthony Bonazza (Applicant) v. Brookfield Group (2007) Ltd. (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

2309-05-G: Sheet Metal Workers' International Association, Local 473 (Applicant) v. Smith Brothers Contracting Corp., The Electrical Power Systems Construction Association (Respondents) *(Dismissed)*

1343-06-G: Universal Workers Union, Labourers International Union of North America, Local 183 (Applicant) v. 614128 Ontario Ltd. o/a Trisan Construction (Respondent) *(Withdrawn)*

1367-06-G: International Brotherhood of Electrical Workers, Local Union 1739 (Applicant) v. R.M. Belanger Limited (Respondent) *(Withdrawn)*

3703-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Blue Line Plumbing & Heating Ltd. (Respondent) *(Withdrawn)*

0040-07-G: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Aecon Industrial, A Division of Aecon Construction Group Inc. (Respondent) *(Withdrawn)*

0710-07-G; 0711-07-G; 1582-07-G; 1583-07-G: Labourers' International Union of North America, Local Union 837 (Applicant) v. Canning Contracting Limited (Respondent); Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America Local Union 506 (Applicant) v. Canning Contracting Limited (Respondent) *(Terminated)*

0878-07-G: Labourers International Union of North America, Local 1081 (Applicant) v. Babcock & Wilcox Canada (Respondent) *(Withdrawn)*

0992-07-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Sutherland-Schultz Inc. (Respondent) *(Endorsed Settlement)*

1159-07-G; 1182-07-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. 1516767 Ontario Ltd./Canderel Development Corporation (Respondent) *(Withdrawn)*

1419-07-G: Labourers' International Union of North America, Local 1089 (Applicant) v. Van Bree Drainage & Bulldozing Limited (Respondent) *(Withdrawn)*

1482-07-G: Sheet Metal Workers International Association, Local 47 (Applicant) v. Flynn Canada Ltd. (Respondent) *(Terminated)*

1671-07-G; 1725-07-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 Sprinkler Fitters of Ontario (Applicant) v. 760365 Ontario Limited (c.o.b. as International Fire Systems) (Respondent) *(Endorsed Settlement)*

1677-07-G: Labourers' International Union of North America, Local 493 (Applicant) v. M & G Fencing Inc. (Respondent) *(Granted)*

1700-07-G: Labourers' International Union of North America, Local 527 (Applicant) v. Robert B. Somerville Co. Ltd. (Respondent) *(Withdrawn)*

1704-07-G: Labourers' International Union of North America, Local 1036 (Applicant) v. 1425105 Ontario Inc. o/a Les Burch & Son Contracting (Respondent) *(Terminated)*

1723-07-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Jerry's Asphalt Paving Inc. (Respondent) *(Terminated)*

1745-07-G: Sheet Metal Workers' International Association, Local 235 (Applicant) v. Cladding Experts Inc. (Respondent) *(Granted)*

1748-07-G: International Union of Operating Engineers, Local 793 (Applicant) v. Bianchi Contracting (2004) Inc. (Respondent) *(Granted)*

1750-07-G: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Power Cable Installation (Toronto) Limited (Respondent) *(Withdrawn)*

1751-07-G: The International Union of Painters and Allied Trades, Local Union 200 (Applicant) v. Thomas Nicholas Piscopo c.o.b. as TNP Contracting (Respondent) *(Granted)*

1777-07-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Oban Electric Limited (Respondent) *(Endorsed Settlement)*

1800-07-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. 1280608 Ontario Ltd. o/a J.D. Carpentry (Respondent) *(Withdrawn)*

1805-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. D & D Metal Erectors (Respondent) *(Terminated)*

1806-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. D & D Metal Erectors (Respondent) *(Granted)*

1821-07-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pure Laser Hair Removal & Treatment Clinic (Canada) Inc. (Respondent) *(Endorsed Settlement)*

1856-07-G: International Union of Operating Engineers, Local 793 (Applicant) v. Leroy Construction Equipment Rental (Respondent) *(Granted)*

1897-07-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Trojan Commercial Furniture Inc. (Respondent) *(Granted)*

1907-07-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Youngs Architectural Glazing Ltd. (Respondent) *(Granted)*

1917-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. AMF All Metal Fabricators Ltd. (Respondent) *(Granted)*

1918-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. L & M Metal Erectors (Respondent) *(Granted)*

1928-07-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Lorcon 2000 Contracting Ltd. (Respondent) *(Granted)*

1962-07-G: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Zabit Otag c.o.b. as Diyar Construction (Respondent) *(Granted)*

1974-07-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Northstar Wall Systems Limited (Respondent) *(Granted)*

1984-07-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Don Mathews c.o.b. as Twins Drywall & Acoustics (Respondent) *(Granted)*

1985-07-G: The International Union of Painters and Allied Trades, Local Union 1590 (Applicant) v. Ellis Glass & Mirror Ltd. (Respondent) *(Granted)*

APPEALS - EMPLOYMENT STANDARDS ACT

0636-06-ES: James L. Alderton (Applicant) v. Tatro Equipment Sales and, Director of Employment Standards (Respondents) *(Dismissed)*

0743-06-ES: Duke Cheung, Director of 1608845 Ontario Inc. and S.C. Custom Builder Inc. (Applicant) v. Long Chen, Jian Song Shi, Yong Jie Sun, Chun Haui Gao, and, Director of Employment Standards (Respondents) *(Dismissed)*

1515-06-ES: Christina Wyatt (Applicant) v. Toronto Executive Consultants and, Director of Employment Standards (Respondents) *(Terminated)*

1565-06-ES: 1327827 Ontario Limited o/a Tri Land Excavating and Haulage (Applicant) v. Ivan O'Brien and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1980-06-ES; 1981-06-ES: Convertec Inc. (Applicant) v. Igor Nikitin and, Director of Employment Standards (Respondents); Convertec Inc. (Applicant) v. Galina Nikitina and, Director of Employment Standards (Respondents) *(Dismissed)*

2013-06-ES: North American Tool & Die (Applicant) v. Mark Leesley, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2054-06-ES: Rabin Ramah (Applicant) v. Starbucks Coffee Canada and, Director of Employment Standards (Respondents) *(Withdrawn)*

2119-06-ES: 758649 Ontario and Party Machine (Applicant) v. Corrine Ann Kajfasz, and, Director of Employment Standards (Respondents) *(Dismissed)*

2129-06-ES: Dweepnarine Rambally (Applicant) v. Mitas Auto Services Inc., Director of Employment Standards (Respondents) *(Endorsed Settlemnet)*

2704-06-ES: Tenneco Owen Sound Inc. (Applicant) v. Cameron Cole and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2740-06-ES: Marc Paquette (Applicant) v. Printwell Management Inc. and, Director of Employment Standards (Respondents) *(Withdrawn)*

2743-06-ES; 3036-06-ES: Edward Sivitilli, a director of Sivex Housewares Inc. (Applicant) v. Zareen Aaqil, Leonides Abella, Melinda Adams, Vanessa Adams, Monisa Ahmad, Shokria Ahmadi, Amany Alkishawy, Deirdre Allard, Miriam Alvarez, Rosa Alvarez, Ashley Amaral, Maria Teresa Andrade, Kristina Annesley, Anna Antongiovanni, Sophie Anton-Nichola, Anna Arduini, Susan Armstrong, Asha Arora, Sara Artelle, Linda Ayow, Aida Azarakhsh, Corazon Bachiller, Carla Balmakoon, Shamdai Balmakoon, Fiona Barnett, Noora Bassari, Linda Beaton, Andrea Beauvais, Momtaz Begum, David Bereczki, Emma Bersalona, Leclawatic Bhim, Charles Blais, Julie Bourque, Maureen Boutin, John Brose, Eva Brown, Katie Brown, Karen Burdeit, Angele Burelle, Nancy Burgess, Heddisa Caddell, Carol Campbell, Rosanna Campbell, Krystle Casilli, Valerie Cassie, Jeffrey Chancey, Gajju Chandroutie, Asha Charitar, Annamaria Ciampa, Amanda Clark-Lynch, Laura Clarkson, Marie Clouthier, Patricia Collins, Jarod Colliss, Susan Conley, David Constable, Kristen Corley, Jessica Cornell, Irene Cowan, Barbara Crawford, Breanne Crump, Dawn Cuthbert, Joan Cyr, Oksama Danshina, Maurice Dasilva, Lisa Davidson, Linda

Davis, Lori Davis, Olivia Deak, Kristen Dedrick, Cassandra Desantis, Faranak Dhanani, Satwinder Dhanjal, Rosario Diaz, Lina Didio, Dorien Dinkha, Michael Duff, Victoria Dumbraveanu, Julie Dunleavy, Michelle Dunn, Lynn Dupuis, Cathy Dylowicz, Natasha Dylowicz, Syeda Tahmina Elahi, Samille Elliston, Cristina Escobar, Fernando Escobar, Alysha Evans, Lisa Eybergen, Feri Fakhrol Sadat, Susanne Farag, Sahel Farahmand Kiya, Antoinette Farina, Amanda Farrant, Alfonso Felice, Joshua Felice, Filomena Ferrante, Heather Fiorino, Alexandra Fitzgibbon, Frances Fogarty, Judy Gagne, Danielle Gallant, Aneliya Garrido, Barb Gauthier, Debbie Geisel, Courtney Giacomini, Donna Giordano, Jamie Girdwood, Louise Gladwich, Lilian Gogo, Nicole Graham, Samantha Gretton, Dana Grigoresw, Mary-Ellen Guertin, Dinusha Gunasingham, Najou Habib, Susan Hainic, Surujpaul Hardai, Nancy Harnett, Brenda Harrod, Ashley Hazan, Julie Hickling, Catherine Holness, Lila Hopkins, Louise Horning, Sarah Horsley, Hajar Hosseini, Jacqueline Houghton, Simon Hube, Lisa Hutcheson, Lisa Iakovleva, Mohamoud Idil, Luke Inglis, Elliston Ivona, Brenna Jack, Mehrangiz Javadpour, Stephanie Jean, Julie Johnson, Sherri Jones, Judith Jowlabar, Anita Kasza, Joyleen Keegan, Celina Keir, Christine Keleher, Stacey Kelenjian, Nicole (Nikki) Kennedy, Seta Kevorkian, Melanie Kinnear, Jaclyn Klein, Dorothy Kozakowski, Snezana Krunie, Christina Kuznetsova, Sheila Lad, Stephanie Lanthier, Valerie Lapierre, David Laroche, Jonathan Lawrence, Ruth Lebeter, Nicole Ledoux, Leslie A. Lewis, Christina Lippa, Jennifer Litman, Michael Lorde, Michelle Lucier, Marion Lyle, Khin Y. Ma, Danielle Macaulay, Lori Mackey, Silvana Mafrici, Irene Malit, Robin Maloney, Victoria Mantha, Zionaira Maqbool, Amanda Margetson, Anthony Margiotta, Linda Marini, Sonya Marques, Carlos Martinez, Malti Mathur, Terra Maxey, Corrina Mcaloon, Scott Mcluckie, Nighat Memon Kauser, Ana Luz Mendez, Bobbi Merbs, Lynn Metcalfe, Parvanch Mohammad-Zadch, Lisa Mohammed, Candida Molina, Jennifer Monaghan, Mcagan Montpetit, Gloria Morales, Elizabeth Morgan, Jean Morgan, Lori Moritz, Sara Mosadeq, Danielle Moyles, Rebecca Munro, Tarrah Narain, Christine Ngo, Reyna Noffal, Vanessa Nordt, Valerie O'Byrne, Laurie O'Grady, Jason Ouellet, Ana Pacheco, Amrita Padan, Fabiola Palma, Xiu Xian Pang, Julie Paquette, Kathy Parent, Katie Patterson, Cari Pecora, Leslie Peter, Christine Phillips, Karen Piehl, Giovanna Pigliarolo, Luca Pigliarolo, Patricia Pigliarolo, Leonid Pokoussaev, Joyarany Ponnampalam, Terri Powell, Mahwash Qureshi, Rubina Qureshi, Jenny Ramos, Andrea Ramoutar, Minawattie Ramyad, Mahboba Rashedi, Nellie Ravelas, Ramathilagam Ravi, Geraldine Reid, Tanya Rependa, Susan Richards, Dina Riviera, Eleanor Robert, Rose Rocchetti, Jennifer Rodriguez, Jessica Roth, Sue Routledge, Ana E. Ruiz, Tamara Russell, Mark Ryan, Victoria Ryk, Neda Sadeghi, Viviane Sadeh, Nahan Samaroo, Yan Scherbakov, Elida Schippers, Bea Schofield, Krista Seguin, Mary Semenko, Melika Shafouri, Riffat Shaikh, Sepideh Shayegan, Huma Siddiqui, Amanda Smith, Amanda Smith, Austin Smith, Diane Smith, Renata Sobieski, Laura Sopkowe, Niki Spourgitis, Rosemary Stalletti, Thea Standish, Joanna Steen, John Kenneth Stephens, Jacqueline Stone, Polly Summers, Marno Suriyan, Mohanlall Surujpaul, Ivy Tarback-Hamacher, Nayab Tariq, Sara Tattersall, Karen Taylor, Michael Taylor, Helen Thorpe, Shannon Thrasher, Marjorie Tiefenbach, Debbie Tomlin, Keely Trudgeon, Maria Valle Perez, Chantel Vallier, Milan Varga, Zsuzsanna Vaska, Packiyalechmi Velusa, Paula Verteramo, Gabriela Voicu, Diana Vollmer, Sarah Wagner, Jane Wareham, Stephanie Watt, Michelle Watte, Danielle Wayne, Charity Weber, Ronald White, Nalini Wickrama, Catherine Williams, Angela Wilson, Jamie Wilson, Phaedra Winger, Nancy Wu, Savitree Yadram, Hosne Yasmin, Joey Yip, Salma Zahedi, Director of Employment Standards (Respondents); Edward Sivitilli, a director of Sivex Housewares Inc. (Applicant) v. Katie Patterson, and, Director of Employment Standards (Respondents) *(Dismissed)*

2800-06-ES: 2055530 Ontario Inc. operating as Subway (Applicant) v. Gayle Chiarelli, and, Director of Employment Standards (Respondents) *(Dismissed)*

2839-06-ES: Sensations Salon (Applicant) v. Sheri Marshall, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2845-06-ES: Muskoka Lakes Golf & Country Club, Limited (Applicant) v. Kevin McGarrell and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2926-06-ES; 2927-06-ES; 2928-06-ES; 2929-06-ES: Ryan Sim, a director of All Pro Home Services Group Inc. and Elite Pro Renovations Inc. (Applicant) v. Brad Benedict, Matthew Bokor, Scott Bokor, Michael Boland, Keith Boone, Darrin Bourgeon, Tony Bowman, Peter Brown, Matthew Buller, Nelson Carpanta, Jeff Clement, Alwin Curtis, Tom Eagles, Adam Edwards, Rex Elliot, Fred Foley, Gordon Forfitt, Nathan Forwell, Doug Furlong, Leanne Giilck, Justin Gottfried, Ron Hamlin, Paula Hicks, Jason Hoch, Bill Johnston, Matthew Krzyarowski, Jamie LaFlamme, Tim Laidlaw, Adrian Langill, Robert Lee, Robert Lewis, Paul Marche, Wally Morgan, Jason Nichol,

Paul Nobes, Jesse Osier, Wayne Osier, Dwayne Perrier, Rodney Phelan, Christopher Plumb, Scott Presley, Ryan Michael, Phillipe Schraeder, Matthew Stahley, Shaun Turcotte, Peter Vander Schans, Hank Venema, Paul Walczyk, Blair Weiershauser, Ray Welch, Howard Wheeler and, Director of Employment Standards (Respondents); Ryan Sim, a director of All Pro Home Services Group Inc. and Elite Pro Renovations Inc. (Applicant) v. Marcel Isaac, Leroy Synyard and, Director of Employment Standards (Respondents); Ryan Sim, a director of All Pro Home Services Group Inc. and Elite Pro Renovations Inc. (Applicant) v. Doug Podann and, Director of Employment Standards (Respondents); Ryan Sim, a director of All Pro Home Services Inc. and Elite Pro Renovations Inc. (Applicant) v. Karen Elker and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2940-06-ES: Keith Zimmer (Applicant) v. Reko Tool & Mold and, Director of Employment Standards (Respondents) *(Dismissed)*

3011-06-ES: Marketing Concepts Group Inc. (Applicant) v. Lorraine Barry and, Director of Employment Standards (Respondents) *(Dismissed)*

3060-06-ES: Leo Mangaoil (Applicant) v. Dollarama, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3081-06-ES: Supreme Tooling Group, A General Partnership between ABC Plastics Limited and ABC Plastic Mfg. Inc. carry on business in Ontario (Applicant) v. Guo Lian (Franklin) Fu, Director of Employment Standards (Respondents) *(Dismissed)*

3132-06-ES: Quebecor World Inc. (Applicant) v. Carlo Binetti, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3190-06-ES: The Squires Lawn & Garden Maintenance Services Ltd. (Applicant) v. Salim Nanji, Director of Employment Standards (Respondents) *(Granted)*

3372-06-ES: Christine Drysdale (Applicant) v. 11311307 Ontario Ltd. o/a Action Taxi and, Director of Employment Standards (Respondents) *(Withdrawn)*

3722-06-ES: Karen McPherson (Applicant) v. Woodbine Entertainment Group and, Director of Employment Standards (Respondents) *(Dismissed)*

3764-06-ES: Charles Linton (Applicant) v. Falcon Environmental Services, Director of Employment Standards (Respondents) *(Withdrawn)*

4095-06-ES: 1392099 Ontario Inc. o/a Hoops Sports Bar and Grill (Applicant) v. Miranda Roesch and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0214-07-ES: Jayne McCaugherty (Applicant) v. Triaxdesign Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0289-07-ES; 0291-07-ES: Rajeswary Surenthiran (Applicant) v. Partrek Distribution Ltd., Director of Employment Standards (Respondents); Satgunam Thuraisamy (Applicant) v. Partrek Distribution Ltd., Director of Employment Standards (Respondents) *(Withdrawn)*

0415-07-ES: Lift Temp Limited (Applicant) v. Director of Employment Standards (Respondent) *(Withdrawn)*

0490-07-ES: Toronto Budget Hostel Ltd. (Applicant) v. Krista Badour and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0602-07-ES: Parmjit Dhaliwal (Applicant) v. Roland Farms Ltd. and, Director of Employment Standards (Respondents) *(Withdrawn)*

0633-07-ES: Toronto Budget Hostel Ltd. (Applicant) v. Shophie Chartrand and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0733-07-ES: Stephen Troy (Applicant) v. Boehmer Box LP, Director of Employment Standards (Respondents) *(Withdrawn)*

0735-07-ES: Christine Mailloux (Applicant) v. Autoliv Canada, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0825-07-ES: Wild Cats Construction Inc. (Applicant) v. Bruno Paquette and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0869-07-ES: Theresa L. Williams (Applicant) v. Albatross Motel, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0884-07-ES: CNC Global Limited/CNC Global Limitee (Applicant) v. Anupam Saurabh, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1034-07-ES: Dougherty's Meats (2005) Ltd. (Applicant) v. Joan Smith and, Director of Employment Standards (Respondents) *(Terminated)*

1066-07-ES: Jay-R-Enterprize (Applicant) v. William Gregg and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1092-07-ES: Maria Sonia Balbas (Applicant) v. Dixie Eastgate Dental Clinic and Laboratory and, Director of Employment Standards (Respondents) *(Withdrawn)*

1107-07-ES: Anthony's Dry Cleaning Ltd. o/a One Hour Martinizing (Applicant) v. Audrey Ogle, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1157-07-ES: 967198 Ontario Limited (Applicant) v. Pauline Osala and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1184-07-ES: Kiki Kapalua Inc. o/a Loki (Applicant) v. Monica Neish and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1219-07-ES: Dr. Donald C. Teskey (Applicant) v. Anne Marie Saintyl and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1244-07-ES: Ray Daamen (Applicant) v. Perth Precision Machining & Manufacturing and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1261-07-ES: Arben Prendi (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

1262-07-ES: Sharon Jarvis (Applicant) v. Albamar Holding Company Inc. o/a Danmar Lawn Care and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1299-07-ES: Flying Saucer Restaurant (Applicant) v. Michelle Metz and, Director of Employment Standards (Respondents) *(Withdrawn)*

1301-07-ES: 1022029 Ontario Ltd. o/a Pat's Resto and, Heritage Inn & Restaurant (Applicant) v. Deborah Rogoschensky and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1324-07-ES: Feng Ping Liu (Applicant) v. Wingson Ltd. and Lapson Washing Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1400-07-ES: Universal Showcase Ltd. (idX Corporation) (Applicant) v. Raymond Butt and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1401-07-ES: Sebastiao Andrade Filho (Applicant) v. Magno Limestone Depot and Installations Ltd. and, Director of Employment Standards (Respondents) *(Withdrawn)*

1431-07-ES: Spartan Collision Corp. (Applicant) v. Matthew Fraser and, Director of Employment Standards (Respondents) *(Terminated)*

1537-07-ES: AWS Sales & Marketing (Applicant) v. John Bursey and, Director of Employment Standards (Respondents) *(Dismissed)*

1545-07-ES: Amare Doyo (Applicant) v. 1663400 Ontario Inc. o/a Quickie Convenience and, Director of Employment Standards (Respondents) *(Withdrawn)*

1575-07-ES: Cash-N-Dash (Applicant) v. Raza Malik and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1764-07-ES: Haldamac Investments (Applicant) v. Terry McLean, and, Director of Employment Standards (Respondents) *(Terminated)*

1827-07-ES: Jessica Fex (Applicant) v. NCO Financial Services, Inc/Services Financiers NCO Inc., Director of Employment Standards (Respondents) *(Terminated)*

1832-07-ES: The Cow and Sow Eatery (Applicant) v. Shauna Liscombe and, Director of Employment Standards (Respondents) *(Dismissed)*

1987-07-ES: David M. Johnson (Applicant) v. Waterdown Towing Inc., Director of Employment Standards (Respondents) *(Terminated)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

3656-06-HS: Holland Hitch of Canada LTD (Applicant) v. Canadian Auto Workers Local 636 and, Don A. MacNeil, Inspector (Respondents) *(Withdrawn)*

0271-07-HS: 1673747 Ontario Inc. o/a Grew Mfg. (Applicant) v. Monique Beatty and, Melanie Wegler, Inspector (Respondents) *(Withdrawn)*

1105-07-HS: Lakeside Pavilion Handcrafted (Applicant) v. Timothy Luesby, Inspector (Respondent) *(Withdrawn)*

1397-07-HS; 1398-07-HS: Ontario Clean Water Agency (Applicant) v. Ontario Public Service Employees' Union, Local 534 and, Carl Broughton, Inspector (Respondents) *(Dismissed)*

2032-07-HS: CAW 1973 (Applicant) v. General Motors Windsor Transmission Plant, T. Waraich - Inspector (Respondents) *(Dismissed)*

REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

4225-05-M: Le Syndicat canadien de la fonction publique, section locale 4540 (Applicant) v. Montfort Renaissance Inc. (Service de santé des soeurs de la charité d'Ottawa) (Respondent) *(Granted)*

1207-07-M: Service Employees International Union, Local 1.on (Applicant) v. Sunrise of Unionville (Respondent) *(Granted)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1623-06-ES: Giuseppe F. Tedesco (Applicant) v. Joe Bone's Grill Inc. and, Director of Employment Standards (Respondents) *(Dismissed)*

3371-06-U: Kris Persad (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. The Toronto Transit Commission (Intervener) *(Dismissed)*

0644-07-U: Tony Douglas (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 555 (Respondent) v. Parmalat Dairy & Bakery Inc. (Intervener) *(Dismissed)*

1274-07-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Veera Group Inc. (Respondent) *(Withdrawn)*

1331-07-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Western Ontario Drywall Limited (Respondent) *(Dismissed)*

1396-07-HS: RONA Building Center 663556 Ontario Ltd. (Applicant) v. Joseph Tarasco and, Wayne Murphy, Inspector (Respondents) *(Dismissed)*

1514-07-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Oxnard Homes, Oxnard Development Inc. and Oxnard Boxgrove Ltd. (Respondent) *(Dismissed)*

PAY EQUITY ACT

0404-07-PE: Fairlane Machine Tools Ltd. (Applicant) v. Madeleine Godin,, Anne Vanderstelt, and, Natalie Jones (Respondents) *(Dismissed)*

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